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Sup Ct

Vol. I

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1940

No. 330

OPP COTTON MILLS, INC., ET AL., PETITIONERS,

vs.

ADMINISTRATOR OF THE WAGE AND HOUR DIVISION OF THE DEPARTMENT OF LABOR

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED AUGUST 12, 1940.

CERTIORARI GRANTED OCTOBER 14, 1940.

Office - Supreme Court, U.S.
FILED
AUG. 13 1940
CHARLES ELMORE CROPLEY
CLERK

TRANSCRIPT OF RECORD

Volume I

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 330

OPP COTTON MILLS, INC.,
Petitioner,

versus

ADMINISTRATOR OF THE WAGE AND HOUR DIVISION OF THE DEPARTMENT OF LABOR,
Respondent.

Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit

UNITED STATES OF AMERICA.

UNITED STATES
CIRCUIT COURT OF APPEALS

FIFTH JUDICIAL CIRCUIT.

PLEAS AND PROCEEDINGS had and done at a regular term of the United States Circuit Court of Appeals for the Fifth Circuit, begun on the third Monday in November, A. D., 1939, at New Orleans, Louisiana, before the Honorable Edwin R. Holmes and the Honorable Leon McCord, Circuit Judges, and the Honorable Sidney C. Mize, District Judge:—

OPP COTTON MILLS, INC.,
Petitioner,

versus

ADMINISTRATOR OF THE WAGE AND HOUR DIVISION OF THE DEPARTMENT OF LABOR,
Respondent.

BE IT REMEMBERED, That heretofore, to-wit, on the 13th day of November, A. D., 1939, a transcript of the record in the above styled cause, pursuant to a Petition for Review of an Order of the Administrator of the Wage and Hour Division of the Department of Labor, Washington, D. C., was filed in the office of the Clerk of the said United States Circuit Court of Appeals for the Fifth Circuit, which said transcript was filed and docketed in said Circuit Court of Appeals as No. 9313, as follows, to-wit:—

TRANSCRIPT OF RECORD

UNITED STATES
CIRCUIT COURT OF APPEALS
FIFTH CIRCUIT.

No. 9313

GPP COTTON MILLS, INC.,

Petitioner,

versus

ADMINISTRATOR OF THE WAGE AND HOUR DIVISION OF THE DEPARTMENT OF LABOR,

Respondent.

Petition for Review of an Order of the Administrator of the Wage and Hour Division of the Department of Labor, Washington, D. C.

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IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE FIFTH CIRCUIT.

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IN THE

Supreme Court Of The United States

OCTOBER TERM, 1940

No.....

OPP COTTON MILLS, INC., ET AL,
Petitioners,

versus

ADMINISTRATOR OF THE WAGE AND HOUR DIVISION OF THE DEPARTMENT OF LABOR,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

STIPULATION

IT IS HEREBY STIPULATED AND AGREED subject to this Court's approval, by and between the attorneys for the respective parties hereto, that for the purposes of the petition for a writ of certiorari in the above-entitled case, and of the consideration by this Court of the case on the merits if the petition is granted, the printed record shall consist of the following:

(1) The transcript of record filed in the United States Circuit Court of Appeals for the Fifth Circuit, by the petitioner herein, together with a transcript of the proceedings in that court.

(2) The matter contained in the printed volume filed in the Circuit Court of Appeals on behalf of the petitioner entitled "Appendix to Brief of Petitioner and Intervenors" and the matter contained in the printed volume filed on behalf of the respondent entitled "Appendix to Brief of Respondent." This matter will be rearranged so as to appear

in the same order in which it appears in the typewritten transcript of the proceedings before the Administrator as filed by the respondent in the Circuit Court of Appeals. The parties by agreement may delete portions of this matter and may also agree to supplement this matter by additional testimony and exhibits contained in the typewritten transcript, which are to be printed at the cost of the petitioner and inserted at the proper place. The statement of evidence contained in the Appendix to the Brief of Petitioner and Intervenors may be expanded or printed in verbatim form wherever deemed advisable by the parties hereto.

(3) Thirty copies of the above described printed documents shall be filed with the Court.

IT IS FURTHER STIPULATED AND AGREED that petitioner will cause the Clerk of the United States Circuit Court of Appeals for the Fifth Circuit to file with the Clerk of the Supreme Court a certified copy of the entire transcript of the record, together with the exhibits certified and filed by Respondent herein, in said Circuit Court of Appeals.

IT IS FURTHER STIPULATED AND AGREED that if either party wishes to print for the consideration of the Court any additional portion of the transcript of the proceedings before the Administrator and exhibits as filed by the Respondent in the Circuit Court of Appeals, that party may incorporate such portion of said transcript and exhibits in his Brief or in an appendix to his Brief, and that such matters will be considered as a part of the printed record.

OPP COTTON MILLS, ET AL,
By BEN F. CAMERON,
Attorneys,
FRANCIS BIDDLE,
Solicitor General of the United States.

PRAECIPE FOR RECORD.

Filed January 5, 1939.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

No. 9313.

OPP COTTON MILL CO., ET AL,

versus

ADMINISTRATOR OF THE WAGE AND HOUR DIVISION OF THE DEPARTMENT OF LABOR.

Praecipe For Record.

To Oakley F. Dodd, Esquire, Clerk of said Court:

Come the parties and jointly request that the following papers and documents be printed in the record, to-wit:

Petition of Opp Cotton Mills, Inc., with all amendments.

Order admitting petition to filing and ordering record to be filed, and stay order.

Intervention petition of Aponaug Manufacturing Company and J. W. Sanders Cotton Mill, Inc., together with order allowing intervention and stay order, with any amendments.

Recital that intervention petitions, with similar averments, were filed on behalf of the following, and that orders allowing intervention and stay orders were entered just as in the case of Aponaug petition:

10/23/39, J. F. Ames, doing business as Selma Manufacturing Company.

10/24/39, Alabama Mills, Inc.

10/24/39, Acworth Mills.

10/24/39, Micolas Cotton Mills.

10/24/39, Lane Cotton Mills.

10/24/39, Berryton Mills.

10/24/39, Laurel Mills, Inc.

10/25/39, The Alden Mills.

10/28/39, The Jefferson Mills.

11/2/39, Geneva Cotton Mills.

11/2/39, D. H. Morris, Jr., and Joe E. Johnson, d/b/a.

11/2/39, Bama Cotton Mills.

11/2/39, Poulan Cotton Mills.

12/1/39, J. C. Sanders Cotton Mills, Inc. (no stay order requested or allowed).

And other pleadings which may be on file by any petitioner or intervener prior to the time of printing.

Administrative Order No. 1 appointing Industry Committee No. 1.

Administrative Order No. 2 convening Industry Committee No. 1.

Administrative Order No. 6 amending the definition of the textile industry.

Administrative Order No. 10 accepting the resignations of Mr. Kirstein and Mr. Stanton and appointing in their places as members of Industry Committee No. 1 Mr. Lazarus and Mr. Barrows.

Administrative Order No. 25 further amending the definition of the textile industry.

The reports of the majority and minority of Industry Committee No. 1.

The notice of hearing in the matter of the minimum wage recommendations of Industry Committee No. 1.

Objections filed by Aponaug Manufacturing Company, et al. (Vol. 14, pages 2951-2967 of transcript of evidence before Administrator).

Recital that like objections were filed by J. W. Sanders Cotton Mills, Inc., Alabama Mills, Inc., and any others whose objections may appear in the record.

Objections dictated into record by Tyre Taylor, attorney (Vol. 16, pages 3318-3341 of transcript of testimony before Administrator).

Objections dictated into record by Gordon McKelvey. (Mr. Cameron cannot find these objections.)

Findings and Order of Administrator.

Certificate of Administrator to record and exhibits.

(Signed) BEN F. CAMERON,
Attorney for Petitioners and Interveners.

(Signed) GEORGE R. McNULTY,
Attorney for Administrator.

PETITION OF OPP COTTON MILLS, INC.

Filed October 20, 1939.

To the United States Circuit Court of Appeals, Fifth Circuit.

Petition for Review.

9313.

In the Matter of The Recommendation of Industry Committee No. I for Minimum Wage Rates in the Textile Industry.

Opp Cotton Mills, Inc., Petitioner.

To the Honorable the Circuit Court of Appeals for the Fifth Judicial Circuit, at New Orleans:

Petitioner would respectfully show to the Court:

I.

That it is a corporation organized under the laws of the State of Alabama, with principal office and place of business at Opp, Alabama.

II.

That (a) it files this Petition under the provisions of Section 10 of The Fair Labor Standards Act of 1938 (Public No. 718, 75th Congress) hereinafter referred to as the "Act", for and on its own behalf and on behalf of all others within the Fifth Judicial Circuit according as their interests may appear; and (b) the objections hereinafter noted were entered and urged in accordance with the requirements of said Section (Record, p. 3318-3341).

III.

That Petitioner, in the operation of its business within the Fifth Judicial Circuit, as aforesaid, is engaged in the first processing, manufacturing, selling and shipping of cotton goods known in the trade as drills and sheetings, such operations being within the purview of the Order of the Administrator of the Wage and Hour Division of the United States Department of Labor (hereinafter called the "Administrator") defining the textile industry.

IV.

That Petitioner, pursuant to Section 6 of the Act, is now paying its employees a minimum wage of 25 cents per hour, which minimum will be increased to 30 cents per hour on and after October 24th, 1939, by operation of said Section.

V.

That by virtue of proceedings held under the provisions of Sections 5 and 8 The Act, and of a resulting wage order entered by Elmer F. Andrews, Administrator, on September 29th, 1939, Petitioner will be required to pay

a minimum wage of 32½ cents per hour to all of its employees on and after October 24th, 1939, unless the relief herein prayed for is granted.

VI.

That Petitioner is aggrieved by said proceedings and wage order in that:

(1) Industry Committee No. 1 was not constituted in accordance with the intent and requirements of Section 5 of the Act, in that (a) a majority of the Committee and of the groups representing employees and the public were appointed from the Eastern and Northern Sections (non-cotton growing States) of the country, whereas a majority of the textile industry is carried on in the South (in the cotton growing States), while the Employee Representatives on the Committee were not representative of the employees in the Industry; and (b) a consequence of such disregard by the Administrator of the requirements of said Section (that in the appointment of industry committees and of each group thereof due regard shall be given to the geographical regions in which the industry is carried on) was to confer power upon a minority of the industry, to regulate the business of the majority and to make Petitioner's business subject to regulation by its competitors, all of which constitutes an "intolerable and unconstitutional interference with personal liberty and private property".

(2) The Minimum Wage Recommendation of Industry Committee No. 1 was not made in accordance with law in that due regard was not given to the following economic and/or competitive conditions prevailing within the industry:

(a) Comparative transportation costs in the North and South.

(b) The possible desirability, in order to prevent substantial curtailment of employment, of a lower minimum wage than that recommended due to the bimodal character of the existing Southern textile wage structure.

(c) Taxation and the relative tax burden borne by the industry in the North and South.

(d) The economic consequences of the recommended minimum in terms of increased purchasing power.

(e) Comparative living costs in the North and South.

(f) Effect of Reciprocal Trade Treaties, especially those now in force between this country and the United Kingdom.

(g) Effect of the Government's program with respect to raw cotton, including effect of the Export Subsidy.

(h) Effect of the recommended minimum upon small, marginal, and financially weak mills.

(i) Possible desirability of classifications as provided for in Sec. 8 (c) of the Act in order to prevent substantial curtailment of employment within such classifications (especially among old and unskilled employees) and to avoid conferring a competitive advantage upon any group in the industry.

(j) Effect of recommended minimum in terms of possible increase in use of substitutes for cotton, as paper, jute, etc.

(3) The Recommendation of Industry Committee No. 1 is not supported by the evidence adduced or considered by it.

(4) The Recommendation of Industry Committee No. 1 is not supported by the evidence adduced at the Public Hearing.

(5) Specifically, adequate information was not adduced at the Public Hearing as to those factors enumerated in sub-paragraphs (b) to (j), inclusive, of paragraph (2) of Section V of this petition, and as to transportation costs, the conclusion of the Administrator is contrary to the weight of the evidence.

(6) Although an extension of time was repeatedly requested, petitioner and its representatives were denied any adequate opportunity to prepare their case, especially in respect to the adverse effect of the recommended wage minimum upon small, marginal, and financially weak mills, comparative living costs, North and South, and the effect of increased prices upon consumption, and hence upon employment. Petitioner avers that such additional evidence is material and might have affected the result of this wage determination and that reasonable grounds existed for failure to produce such evidence at the Public Hearing in that (a) The WPA wage Scales fixed under the Emergency Relief Appropriation Act of 1939 were not annnounced until after the close of the Public Hearing; and (b) as hereinbefore described, Petitioner was denied sufficient time in which to collect certain other material data. An affidavit as to requests made in the last named connection by Petitioner's representative is attached hereto, marked Exhibit "A" and prayed to be read as a part hereof.

(7) Petitioner and all other Southern mills are laboring under the competitive disadvantage of discriminatory freight rates and comparative remoteness from the principal markets for textile products and Petitioner cannot operate under normal economic conditions without a wage-differential to compensate for such transportation cost and other disadvantages.

(8) The Fair Labor Standards Act is social legislation designed to place such reasonable floor under wages and ceiling over hours as will not result in substantial curtailment of employment or the conferring of competitive advantage upon any group or region. Living costs are cheaper in the South than in the North, as recognized by the Government in fixing WPA wage schedules under the Emergency Relief Appropriation Act of 1939 (Public Resolution No. 24, 76th Congress). The approved uniform 32½ cent minimum was arbitrarily fixed in disregard of such cheaper Southern living costs and of the intent and purpose of the Act as social legislation, and such attempt to equalize competitive conditions between the North and South by the elimination of natural advantages, such as location in a mild climate, with consequent lower living costs, is beyond the authority delegated to the Administrator by the Congress or to the Congress by the Constitution. A schedule of the wages now being paid in the North and South by the Work Projects Administration is attached hereto, marked Exhibit "B" and prayed to be read as a part hereof.

(9) The definition of the Industry as made by the Administrator and contained in Administrative Order No. 1, as amended, is not appropriate for the determination of a minimum wage for the textile industry.

(10) By reason of the perversion of the spirit and intent of the Fair Labor Standards Act as aforesaid, and

of the failures and omissions of the Administrator and of Industry Committee No. 1 to comply with the requirements of the Act as hereinbefore described, Petitioner is about to be placed in an untenable competitive position and is faced with the ultimate destruction of its business and thereby, along with its employees, deprived of property without due process of law and in violation of the Fifth Amendment to the Constitution of the United States.

(11) Through his illegal, capricious, and arbitrary maladministration of the Act, The Administrator has exceeded his lawful authority to the injury of this Petitioner as aforesaid and has further attempted to exercise legislative powers vested in the Congress by the Constitution.

(12) In support of the request contained in paragraph (c) of the next Section (Numbered VII) hereof, Petitioner states (a) That it is faced with irreparable injury if such request for a stay is not granted in that Petitioner would be compelled to begin paying the minimum wage provided for in the order complained of on October 24th, next, and recovery of such amounts so paid, in the event such order is disaffirmed, would entail several hundred separate suits against individual employees, many of whom are incapable of responding to a money judgment; and (b) Petitioner is ready to file in Court an undertaking with a surety or sureties satisfactory to the Court for the payment to the employees affected by the order, in the event such order is affirmed, of the amount by which the compensation such employees are entitled to receive under the order exceeds the compensation they actually receive while such stay is in effect, or to deposit such amounts with the Court or in a depository designated by the Court, or to make such other arrangements that may be satisfactory to the Court.

VII.

Wherefore, Petitioner prays that the Court shall—

(a) Set aside the order of The Administrator fixing a uniform 32½ cent minimum wage for the Textile Industry.

(b) In the event the aforesaid request is denied, to remand this cause to the Administrator with instructions to rescind his approval of the Recommendation of Industry Committee No. 1 and to refer the matter of a minimum wage for the Textile Industry to a new committee constituted in accordance with the requirements of Section 5 (b) of the Act.

(c) In the event the aforesaid requests are denied, to remand the cause to the Administrator with instructions to adduce additional evidence, including the data upon which existing WPA Wage Scales are based, as to comparative living costs in the North and South; the effect of the proposed wage minimum upon small, marginal, and financially weak mills; and the effect of rising prices upon consumption. Petitioner further requests leave to present additional evidence as to each of the foregoing, and that it and its representatives be granted not less than 60 days in which to make necessary surveys and assemble such additional information.

(d) Grant an immediate stay of The Administrator's order in accordance with the provisions of Section 10 (b) of the Act.

(e) Grant such other and further relief as may be proper in the premises.

October 20, 1939.

Respectfully submitted,
OPP COTTON MILLS, INC.,
Petitioner,
By TYRE TAYLOR,
W. GORDON McKELVEY,
BEN F. CAMERON,
Attorneys for Petitioner.

Personally appeared before me, Oakley F. Dodd, Clerk of the United States Court of Appeals, Fifth Circuit, Tyre Taylor and W. Gordon McKelvey, Ben F. Cameron, who make affidavit that they are attorneys of Record for Opp Cotton Mills, Inc., the Petitioner; that they have authority to make this affidavit; and that the matters and things set forth in the foregoing petition are true as therein stated according to their information and belief.

OAKLEY F. DODD,
W. GORDON McKELVEY,
BEN F. CAMERON.

Sworn to and subscribed before me this the 20th day of October, 1939.

OAKLEY F. DODD,
(Seal) Clerk, United States Circuit Court of Appeals.

EXHIBIT A TO ORIGINAL PETITION.

State of Louisiana,
Parish of Orleans.

Affidavit of W. Gordon McKelvey.

My name is W. Gordon McKelvey. My residence and office address is Nashville, Tennessee. I am a member

of the bar of the State and Federal Courts for Tennessee, and of the bar of the Supreme Court of the United States.

In behalf of my client, the Committee Representing Small Southern Textile Mills, and in the presence of witnesses, I requested Elmer F. Andrews, Administrator of the Fair Labor Standards Act, in his office in Washington, D. C., on June 1, 1939, to accord my client, which represented and acted as spokesman for several hundred of the small textile mills in the Southern States, an extension of time beyond the date of June 19, 1939, in which to prepare their case for submission to him at the public hearing he had called to convene on June 19, 1939, to determine whether he would approve or disapprove the recommendations of Industry Committee No. 1, for the textile industry, with respect to minimum wage rates in that industry under the provisions of the Fair Labor Standards Act of 1938 (Public No. 718, 75th Congress). At that time I explained to Mr. Andrews that my client, the said Committee, had just been formed for the purpose of presenting to him certain evidence which Industry Committee No. 1 had not considered in arriving at the recommendations it had made to the Administrator; that it would require a period of several weeks in which to properly collect and prepare such evidence for submission to him; that the necessity of him receiving and considering such evidence was vital to the welfare of these small textile mills in the South, and that the said evidence was in all things material to the issues involved. Mr. Andrews told affiant at that time that he appreciated our situation and that we would be allowed necessary time to prepare our case, and if we were not prepared to proceed on June 19th, or at the adjourned hearing he intended to hold in Atlanta, Ga., on June 26th, 1939, that for me, affiant, to so inform him on either of those dates, and he would accord affiant

a later adjourned hearing, and afford adequate time to properly prepared and present our case.

With this understanding, affiant and his associates set about with all diligence to collect and prepare the evidence which it was felt was of vital necessity and materiality to the issues in the case, and which, affiant avers, would have, if heard and properly considered by the Administrator, required the Administrator to adopt a different course of action from the one adopted by him finally, and would have resulted in his disapproval, rather than approval, of the recommendations of Industry Committee No. 1, as aforesaid.

However, following this understanding with Mr. Andrews on June 1, 1939, and while in the preparations detailed above, affiant received a telegram from Mr. Andrews inquiring if affiant would, on behalf of his clients, prefer to present direct evidence at Washington or Atlanta. This telegram is dated June 13, 1939. Affiant replied by telegraph on the same date, advising Mr. Andrews we preferred to present our evidence in Atlanta, but we doubted our ability to be ready on June 26.

On June 17th, affiant received another telegram from Mr. Andrews advising that because of pressing engagements he would be unable to stay in Atlanta and continue the hearing there as originally agreed and understood, later than July 7th, and requested affiant to present his case in Atlanta at that time, and advising also that the hearing would be adjourned to Washington, after July 7th, for taking further testimony. This telegram was received in affiant's absence.

Then on June 22nd, 1939, affiant received an air mail registered letter from Mr. Andrews, notifying affiant that his group would be heard in Atlanta for two days, namely, July 6th and 7th, and that we should be ready

at that time, and that the hearing would be adjourned back to Washington after that date for the taking of additional testimony. To this telegram affiant replied on June 23, stating we accepted the notice with the understanding that we would be greatly handicapped in being compelled to proceed on July 6th and 7th inasmuch as our evidence was not compiled and our case only partly prepared, but that we would go ahead and do the best we could under the circumstances, and with the further understanding that we would be afforded ample opportunity to present the balance of our case at a later date.

Affiant avers that Mr. Andrews adjourned the Atlanta hearing on July 7th with the blunt announcement that it would be reconvened in Washington, three days later, July 10, 1939.

Affiant further avers that on receipt of Mr. Andrews' letter of June 22nd, he and his associates were forced to discontinue the collection of a vast amount of material evidence, and begin the assembling of such evidence as had been gathered into form for presentation at the hearing on July 6th; that it was necessary for affiant to personally begin attendance at the hearing on June 26th thus depriving him of personally further assisting in preparation of the evidence; that he was deprived of the opportunity of talking with many witnesses who wished to testify at the hearing; that he had no sufficient opportunity to confer with engineers, freight rate experts and other such expert witnesses relative to the issues in the case in the effort to show the position of the small Southern textile mills and the situation that would confront said mills in trying to operate under the unreasonable recommendations that had been made by the said Industry Committee.

Affiant further avers that a large number of witnesses connected with the textile industry, and located in seven or eight southeastern and southwestern States, identified with the Committee Representing Small Southern Textile Mills, were denied the same opportunity to testify at the Atlanta hearing, which privilege the Administrator accorded to other witnesses; that the Administrator's arbitrary and capricious action, as aforesaid, deprived affiant of completing his case, in that the witnesses who wished to testify at the Atlanta hearing and who were not so permitted, were unable to testify at the adjourned hearing in Washington because of the penalty of time and expense imposed upon them by the Administrator.

Affiant further avers that had Mr. Andrews abided by his agreement with affiant, and afforded additional time in which to collect the evidence available to affiant and his clients, particularly with respect to the handicap of freight rates against the small Southern textile mills, lower living costs in the South, and the relative unreasonableness of the recommendations of the Industry Committee as applicable to the small textile mills industry in the South, as compared with the conditions enjoyed by the competitors of the small Southern textile mills industry, located in other sections of the country, that such evidence before Mr. Andrews, and properly considered by him, would have been sufficient to warrant, and would have been strong enough to demand, that the Administrator disapprove, rather than approve, the recommendations of Industry Committee No. 1, as aforesaid.

W. GORDON McKELVEY.

Subscribed and sworn to before me this 20th day of October, 1939.

OAKLEY F. DODD,
Clerk, United States Circuit Court of Appeals.

(Seal)

EXHIBIT "B".

4-2025

Federal Works Agency,
Work Projects Administration.

For Release to Morning Newspapers,
Wednesday, August 16, 1939.

WPA Announces New Schedule of Monthly Security Wages.

Colonel F. C. Harrington, Work Projects Commissioner, today announced a new schedule of monthly security wages for WPA project workers in accordance with the requirements of the Emergency Relief Appropriation Act of 1939 and the intent of Congress as expressed in debate. The new wage schedules were transmitted by Colonel Harrington to State WPA Administrators in the form of a general order and will be effective September 1.

In general, the new schedules will mean a substantial increase in WPA wages in Southern States and, in Northern States, the retention of present scales with some exceptions, which include reductions.

The order provides for three wage regions by geographical areas and within these wage regions provides for five classifications of workers; namely, professional and technical, skilled, intermediate, unskilled "A", and unskilled "B". Each of the wage regions is broken down by counties into four population classifications. These provide differentials in wages for counties, first, with no town of over 5,000 population, second, with the largest town between 5,000 and 25,000, third, between 25,000 and 100,000, and fourth, those in which the largest city has

100,000 or more population. This will make a total of only 60 different wage schedules as against the present number of more than 4,000.

Unskilled WPA rural wages in Region III, which comprises the Southern States, will jump from $26 to $35 a month. Unskilled wages in this region in cities of 100,000 or over will be $50.70 a month as against a present schedule of $40.

In Northern and Western cities of 100,000 population and over the unskilled wage rate will be $57.20 as against the present schedule of either $55 or $60 a month. Previous to revision under the new law, the base security wage for unskilled workers in these cities in the North was $55 a month with discretionary authority given to increase this by 10 per cent. In a number of cities; including New York, Cleveland and Detroit, this increase had been granted resulting in an unskilled wage of $60.50 a month; whereas other cities, including Chicago, Los Angeles and San Francisco, had continued at the $55 base level. The new wage schedule gives all such cities a WPA unskilled rate of $57.20 a month.

Colonel Harrington stated that in determining the new wage schedules the controlling factors were the language of the Act and the obvious intent of the Congress as to the application of the wage provision. The Act provides that no substantial change in the National average WPA wage shall be made. In June the average WPA wage was approximately $53 a month throughout the country. The Act also provides, however, that variations in WPA wages for the same type of work within different geographical areas shall not be greater than differences in the cost of living. In this connection, Colonel Harrington called attention to the obvious intent of the Congress, as evidenced by statements made in the

debate on the bill and subsequent to its passage that no substantial reductions in present WPA wages in the North should be made.

Colonel Harrington stated that the WPA had considered all available data on the cost of living in both urban and rural areas, and taking these facts into consideration, together with the language of the Act and its interpretation as evidenced in debate, had arrived at the new schedule. This schedule increases the national wage average by approximately $2.50 a month, which is considered to be permissible under the terms of the Act.

(Attached are copies of Colonel Harrington's general order outlining the new wage schedule and a copy of Section 15 (a) of the Act requiring such revision.)

GENERAL ORDER No. 1.

A189

Federal Works Agency,

Work Projects Administration.

By virtue of and pursuant to the authority vested in me by the provisions of subsection (a) of Section 15 of the Emergency Relief Appropriation Act of 1939, approved June 30, 1939, (Public Resolution No. 24—76th Congress) I hereby establish the following schedule of monthly earnings.

The schedule of monthly earnings applicable to any county shall be based upon the 1930 population of the largest municipality within the county, in accordance with the following schedule: except that the schedule of

monthly earnings applicable to counties in which the 1930 population of the largest municipality was 100,000 or more shall be applicable to the entire area included within the following metropolitan districts as such districts are defined by the Fifteenth Census of the United States—1930: Baltimore; Boston; Buffalo-Niagara; Chicago; Cincinnati; Cleveland; Detroit; Kansas City, Kansas-Kansas City, Missouri; Los Angeles; Milwaukee; Minneapolis-St. Paul; New York City-Northeastern New Jersey; Philadelphia; Pittsburgh; Providence, Rhode Island-Fall River-New Bedford, Massachusetts; St. Louis; San Francisco-Oakland; Scranton-Wilkes Barre; Washington, D. C.

Schedule of Monthly Earnings

Area Counties in which the 1930 population of the largest municipality was:	Wage Class Unskilled "B"	Unskilled "A"	Intermediate	Skilled	Professional and Technical
Wage Region I.					
100,000 and over	$52.00	$57.20	$68.90	$89.70	$94.90
25,000 to 100,000	48.10	52.00	62.40	81.90	84.50
5,000 to 25,000	42.90	48.10	57.20	74.10	76.70
Under 5,000	39.00	42.90	52.00	67.60	68.90
Wage Region II.					
100,000 and over	$52.00	$57.20	$68.90	$89.70	$94.90
25,000 to 100,000	48.10	52.00	62.40	81.90	84.50
5,000 to 25,000	46.80	50.70	61.10	79.30	81.90
Under 5,000	44.20	49.40	59.80	76.70	78.00
Wage Region III.					
100,000 and over	$46.80	$50.70	$61.10	$79.30	$81.90
25,000 to 100,000	42.90	48.10	57.20	74.10	75.40
5,000 to 25,000	36.40	40.30	48.10	62.40	65.00
Under 5,000	31.20	35.10	42.90	54.60	55.90

Wage Region I includes: Connecticut, Delaware, District of Columbia, Illinois, Indiana, Iowa, Maine, Maryland, Kansas, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Dakota, Ohio, Pennsylvania, Rhode Island, South Dakota, Vermont, West Virginia, Wisconsin.

Wage Region II includes: Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, Wyoming.

Wage Region III includes: Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia.

Certified Trainees Assigned to Household Workers Training Projects. The monthly earnings applicable to this class of work shall be fifty per cent (50%) of the schedule of monthly earnings applicable to the Unskilled "B" wage class in the locality in which the Household Workers Training Project is being operated.

Territories and Island Possessions.

	Unskilled "B"	Unskilled "A"	Intermediate	Skilled	Professional and Technical
Alaska	$52.00	$57.20	$68.90	$89.70	$94.90
Puerto Rico	19.50	22.10	27.30	35.10	36.40
Virgin Islands	19.50	22.10	27.30	35.10	36.40
Hawaii—					
All Islands except Oahu	36.40	40.30	48.10	62.40	65.00
Island of Oahu	42.90	48.10	57.20	74.10	75.40

Except as otherwise provided by regulations of the Work Projects Administration the earnings of all persons engaged upon projects financed in whole or in part from funds appropriated by the Emergency Relief Appropriation Act of 1939 to the Work Projects Administration or prior Emergency Relief Appropriation Acts shall be on a monthly basis in accordance with the Schedule of Monthly Earnings established by this general order.

The earnings of persons engaged upon such projects shall differ according to the various classes of work, namely, Unskilled "B", Unskilled "A", Intermediate, Skilled, and Professional and Technical, as prescribed in the Schedule of Monthly Earnings.

The Schedule of Monthly Earnings prescribed herein shall become effective September 1, 1939. Payment for work performed prior to September 1, 1939, shall be paid in accordance with the Schedule of Monthly Earnings in effect prior to that date. Payment for work performed subsequent to August 31, 1939, shall be in accordance with the Schedule of Monthly Earnings set forth herein.

This General Order shall superesede and rescind Administration Order No. 67 of the Works Progress Administration dated April 11, 1939, and shall rescind on the effective date of this General Order all adjustments to the Schedule of Monthly Earnings which have been authorized on the basis of contiguity, redefinition of regions, adjustments within the range of ten per cent, and specific adjustments for individual projects.

F. C. HARRINGTON,
(F. C. Harrington)
Commissioner of Work Projects.

Approved August 15, 1939.

Effective Date September 1, 1939.

Emergency Relief Appropriation Act of 1939.

(Approved June 30, 1939.)

Sec. 15 (a). The Commissioner shall fix a monthly earning schedule for persons engaged upon work projects financed in whole or in part from funds appropriated by section 1 which shall not substantially affect the current national average labor cost per person of the Work Projects Administration. After August 31, 1939, such monthly earning schedule shall not be varied for workers of the same type in different geographical areas to any greater extent than may be justified by differences in the cost of living. The Commissioner shall require that the hours of work for all persons engaged upon work projects financed in whole or in part by funds appropriated by section 1 shall (1) be one hundred and thirty hours per month except that the Commissioner, in his discretion, may require a lesser number of hours of work per month in the case of relief workers with no dependents and the earnings of such workers shall be correspondingly reduced, and (2) not exceed eight hours in any day and shall not exceed forty hours in any week.

ORDER ADMITTING PETITION TO BE FILED AND ORDERING RECORD TO BE FILED.

Filed October 20, 1939.

A petition for review of the order of the Administrator of the Wage and Hour Division, Department of Labor, entered on September 29th, 1939, "In the Matter of the Recommendation of Industry Committee No. 1 for Minimum Wage Rates in the Textile Industry.", having been presented to this Court;

It is Ordered that said petition be filed and docketed as of October 20, 1939; and

It is further Ordered that a copy of this order and said petition be forthwith served upon the Administrator of the Wage and Hour Division, Department of Labor, and that said Administrator, upon service of such copies, forthwith certify and file in this Court a transcript of the entire record in the proceeding, in conformity to Rule 38, of this Court.

RUFUS E. FOSTER,
United States Circuit Judge.

Oct. 20/39.

ORDER STAYING PROCEEDINGS UPON PETITIONER FURNISHING BOND.

Filed October 20, 1939.

Upon considering the petition of Opp Cotton Mills, Inc., for a stay of the order of the Administrator of the Wage and Hour Division of the Department of Labor, dated September 29, 1939, approving the recommendation of Industry Committee #1 and fixing a minimum wage of 32½¢ per hour, effective October 24, 1939, for the Textile Industry.

It is Ordered that said order be, and it is hereby, stayed in so far as petitioner is concerned during the pendency of this suit, upon petitioners filing in Court an undertaking in the amount of $10,000.00, payable to Oakley F. Dodd, Clerk, for the benefit of all interested parties, with a surety or sureties to be approved by the Clerk for the payment to the employees of petitioner, affected by the Order; in the event such order is affirmed,

of the amount by which the compensation such employees are entitled to receive under the order exceeds the compensation they actually receive while said stay is in effect.

So Ordered, this 20th day of October, A. D. 1939.

RUFUS E. FOSTER,
United States Circuit Judge.

MOTION TO AMEND PETITION OF OPP COTTON MILLS, INC.

Filed Nov. 20, 1939.

To the Honorable Circuit Court of Appeals for the Fifth Circuit:

Comes the petitioner, Opp Cotton Mills, Inc., and respectfully moves the Court for leave to amend its petition heretofore filed in this cause, in accordance with the amendment hereto attached and shown to the Court.

GORDON McKELVEY,
BEN F. CAMERON,
Attorneys for Petitioner.

AMENDMENT TO PETITION OF OPP COTTON MILLS, INC.

Filed Nov. 20, 1939.

To the Honorable Circuit Court of Appeals for the Fifth Circuit:

Comes the petitioner, Opp Cotton Mills, Inc., and, leave of the Court having been first obtained, files herewith this amendment to its petition for a review and other things heretofore filed herein, and amends said

petition, by adding at the close of paragraph number VI therein, and before paragraph number VII in said petition, the following paragraphs, being numbered VI A, VI B, VI C, VI D, respectively.

VI A.

"That petitioner appeared by its officers and attorneys before the Administrator and protested against and urged its objections to the approval or adoption of the recommendation of said Industry Committee and the entry of the order herein complained of, as will more fully appear from the record of such proceeding; that the petitioner is, and was at all times herein mentioned, a member of the American Cotton Manufacturers' Association and, in addition to the objections made and urged by the petitioner aforesaid, petitioner adopts and makes as its own all protests and objections made and urged before the Administrator by said Association for and on behalf of its members against the approval by the Administrator of the recommendation of said Industry Committee; and petitioner further adopts the averments of the intervention petition filed in this cause by the petitioners, Aponaug Manufacturing Company and J. W. Sanders Cotton Mill, Inc., and relies on all the points and grounds of opposition and objection to the said order and proceedings made or set forth in the said petition, and also those objections and protests incorporated in the minority report of said Industry Committee; and petitioner says that all of such objections have been urged by or on its behalf before the Administrator.

VI B.

"That the said order of the Administrator so approving the recommendation of said Industry Committee was

and is void and unconstitutional, illegal and unenforceable, for the following reasons, to-wit:

(a) The Administrator had no jurisdiction to consider the report and recommendation of said Industry Committee, or to act thereon or to approve the same, or to enter said order of September 29, 1939.

(b) Said Industry Committee was not appointed or constituted in accordance with the provisions of the Act, nor with due regard to the geographical regions in which the industry was and is carried on, in that a majority of said Industry Committee was appointed from the Eastern and Northen sections (non-cotton gowing States) of the country, whereas the larger part of the textile industry is carried on in the Southern section (cotton growing States) of the country, and the employee representatives on said Industry Committee were not representative of the employees in the industry. Reference is made to the orders of the Administrator appointing said Industry Committee with the same effect as if said orders were copied at length herein.

(c) That the report and recommendation of said Industry Committee and the order of the Administrator herein complained of were not made in accordance with law and with the provisions of the Act.

(d) That the report and recommendation of said Industry Committee were and are not supported by the evidence presented to said Industry Committee and that there was no substantial legal evidence on which the recommendation of said Industry Committee was based, but that the findings and recommendations of said Committee represented the opinions, prejudices and predilections of the individual members of said Committee.

(e) That the said Industry Committee did not make a full, fair and complete investigation of the conditions in the industry, and did not determine from any substantial legal evidence that the minimum wage rate of 32½ cents per hour recommended by it did not substantially curtail employment and did not give a competitive advantage to any group in the industry, or did not substantially curtail employment in such classification.

(f) That neither said Industry Committee, in making its recommendation and determining the minimum wage aforesaid, nor the Administrator in entering said order approving such recommendation, gave due and legal consideration of the factors set out in Section 8 of the Act.

VI C.

"That said order so entered by the Administrator approving and adopting the recommendation of said Industry Committee, and all of the findings, recommendations and proceedings had in connection therewith, were and are illegal, void and unenforceable, because the Act, as applied and sought to be applied by the Administrator, was and is illegal, unconstitional and void, for the following reasons:

(a) By the Act, Congress attempts to delegate legislative power to the Administrator and to said Industry Committee, in violation of the Constitution of the United States.

(b) By the Act, Congress seeks to exercise, and does exercise, powers which are reserved to the States, in violation of the Constitution of the United States, and particularly the Tenth Amendment thereof.

(c) The Act deprives petitioner of his property without due process of law, in violation of the Constitution of the United States, and particularly the Fifth Amendment. thereof.

(d) The Act, although purporting to be an exercise by Congress of its power to regulate commerce among the several States, is, in fact, an unconstitutional interference with the right of private employers and employees to enter into or perform contracts concerning wages and hours of employment, and an attempt on the part of Congress to exert power over purely local matters, to which its authority does not extend.

(e) The benefit of all of the provisions of the Constitution of the United States are, and have been throughout these proceedings, claimed and relied upon by the petitioner.

VI D.

"That it was contemplated by the Congress of the United States, in the passage of the Act, that proper differentials would be granted and classifications made, so as to equalize, as far as possible, the application of the Act and to prevent undue and unjust hardships arising from the handicaps recognized in the Act. That it has been the universal policy of the Federal Government, in dealing with similar situations, to grant differentials and to make special rules applying to various regions and classifications. As examples of such policy, differentials were granted in the enforcement of the NRA Codes and minimum wages for petitioner, and others similarly situated, were established on a lower basis than those obtaining in other parts of the country and under other conditions. Likewise, in the enforcement of the Walsh-Healy Act, prevailing wage scales varying by localities and classifications have been applied. The Works Progress Admin-

istration has universally established rates of pay in the section in which petitioner's business is located, and under conditions which surround such business, which are far less than those obtaining for the same work in other parts of the country. All of the foregoing has been done in legislative recognition of the fact that varying conditions require differentials and classifications to prevent the application of the Act, and other of like character, from confiscating the property of petitioner and others similarly situated. Notwithstanding this established policy of the Federal Government, and the clear intention of Congress, the said order of the Administrator approving the recommendation of said Industry Committee wholly ignores such considerations and refuses to petitioner, and others similarly situated, the classifications requested by them, and to which they are so clearly entitled in law and fact."

OPP COTTON MILLS, INC.,
By BEN F. CAMERON,
GORDON McKELVEY,
Attorneys.

State of Mississippi,
Lauderdale County.

Personally appeared before me, the undersigned authority, Ben F. Cameron, who makes affidavit that he is attorney of record for the petitioner in the foregoing amendment to the petition of Opp Cotton Mills, Inc., and is authorized to make this affidavit, and that the matters and things set forth in said amendment are true as therein stated, according to the best of his knowledge, information and belief.

BEN F. CAMERON.

Sworn to and subscribed before me this the 16 day of November, 1939.

MARGARET C. PICKETT,
Notary Public.

(Seal)

ORDER ALLOWING AMENDMENT TO PETITION.

Filed Nov. 20, 1939.

Upon considering the petition of Opp Cotton Mills, Inc., for leave to amend its petition,

It is Ordered that said leave be, and it is, granted, and the petition of Opp Cotton Mills is amended in accordance with the amendments submitted with said motion.

Done at New Orleans, Louisiana, this the 20 day of November, 1939.

RUFUS E. FOSTER,
United States Circuit Judge.

MOTION FOR LEAVE TO FILE SECOND AMENDED PETITION.

Filed Jan. 2, 1940.

To the Honorable Circuit Court of Appeals for the Fifth Circuit:

Comes the petitioner, Opp Cotton Mills, Inc., and respectfully moves the Court to grant it leave to file its second amendment and supplement to the petition filed herein, which amendment and supplement is herewith shown to the Court.

OPP COTTON MILLS, INC.,
By GORDON McKELVEY,
(Gordon McKelvy)
BEN F. CAMERON,
(Ben F. Cameron)
Attorneys.

SECOND AMENDMENT TO PETITION OF OPP COTTON MILLS, INC.

Filed Jan. 2, 1940.

Comes the petitioner, Opp Cotton Mills, Inc., and leave of the Court having been first obtained, amends and supplements its petition, as amended, so that paragraph III shall read as follows:

"III.

That petitioner was at all times mentioned in the said petition, and still is, engaged in the operation of a cotton mill at Opp, a small community of about three thousand people in the State of Alabama; that the mill operated by it was constructed about the year 1921, by local capital, and has been operated continuously with brief interruptions since said time; that said mill was constructed by the citizens of Opp, Alabama, for the purpose of giving employment to local people and that throughout its existence it has employed, as far as might be, citizens of the Town of Opp and the outlying community; that the employees of the said mill are and always have been largely people who were and are engaged in agriculture as a livelihood and who have worked at times in said mill and at other times on the farms in said community; that the employees of said mill have not sprung from peoples who are mechanics or mill workers by tradition or training, but almost altogether from people who have followed agriculture as a livelihood for many generations, and that said employees are not, and in the nature of things cannot be as skilled as employees in other parts of the country who have spent their lives in mechanical and industrial pursuits.

That petitioner sells the output of its mill in the open market and sells all of its goods F. O. B. its mill plant at Opp, Alabama, and does not make delivery to destination of any of the goods manufactured by it. That it buys cotton which is grown entirely in the State of Alabama and processes said cotton into drills and sheetings and other cotton goods and sells them, as aforesaid, to be delivered at its plant in Opp, Alabama.

That some of said goods are manufactured on orders taken before the manufacture of such goods and some are manufactured for holding and sale in due course of business. That as a matter of fact, a good percentage of the goods manufactured in said mill are eventually transported outside of the State of Alabama, but that such transportation is brought about solely and entirely by the purchasers of said goods and that the petitioner has no control over the points to which said goods shall be shipped and does not participate in such shipment except to the extent of loading the goods on the vehicles of the carriers selected by purchaser for their transportation.

That only a negligible number of the employees of the petitioner have any duties to perform in connection with delivery of the said goods to carriers for transportation or in loading them on the vehicles of such carriers.

That probably ninety-five per cent of the employees of the petitioner are engaged in the purely local pursuit of operating a cotton mill. Some of the employees work as spinners, others as weavers, others as mechanics, others as stenographers, bookkeepers and office help, and as janitors and the like, and perform services entirely local in character, and having no connection with commerce. Petitioner avers, therefore, that the petitioner and its employees are not engaged in commerce, but are engaged, as aforesaid, in the production of cotton goods

which do eventually go into inter- and intra-state commerce, as herein set out.

That notwithstanding said facts, the defendant has ruled that petitioner comes within the scope and purview of the said Act and of the order of the Administrator referred to in the original petition, and threatens to enforce and will enforce said Act and said order as against this petitioner, and will require this petitioner to conduct its business in strict conformity with the terms of said Act and of said order, or suffer the penalties therein prescribed, unless the relief herein prayed for shall be granted.

Petitioner further shows that unless said relief is granted, that by reason of the facts herein set out and the other facts shown by the testimony, this petitioner will be wholly unable to operate its said mill without a large deficit, and that it will only be a matter of time before petitioner will be forced to discontinue the operation of its said mill, with the resultant throwing out of employment of its employees and the shutting down of one of the main industries by which said community exists."

OPP COTTON MILLS, INC.,
By GORDON McKELVY,
(Gordon McKelvy)
BEN F. CAMERON,
(Ben F. Cameron)
Attorneys.

State of Louisiana,
Parish of Orleans.

Personally appeared before me, the undersigned authority, Ben F. Cameron, who makes affidavit that he is attorney of record for the petitioner in the foregoing amendment to the petition of Opp Cotton Mills, Inc., and

is authorized to make this affidavit, and that the matters and things set forth in said amendment are true as therein stated, according to the best of his knowledge, information and belief.

BEN F. CAMERON.

Sworn to and subscribed before me this 30 day of December, 1939.

(Seal)

OAKLEY F. DODD,
Clerk, United States Circuit Court of Appeals.

ORDER ALLOWING SECOND AMENDMENT TO THE PETITION.

In the United States Circuit Court of Appeals for the Fifth Circuit.

Opp Cotton Mills, Inc., Petitioner,
vs. No. 9313.
Administrator of the Wage and Hour Division of the Department of Labor, Defendant.

Upon considering the motion for leave to file a second amendment and supplement to the petition filed herein, it is Ordered that said leave shall be, and it is granted, and said second amendment and supplement to the petition as exhibited with said motion is Ordered filed.

This 2nd day of January, 1940.

RUFUS E. FOSTER,
Judge.

PETITION OF INTERVENTION OF APONAUG MANUFACTURING COMPANY AND J. W. SANDERS COTTON MILL, INC.

Filed Oct. 20, 1939.

To the Honorable the Circuit Court of Appeals for the Fifth Judicial Circuit, at New Orleans:

Come the petitioners, Aponaug Mfg. Co. and J. W. Sanders Cotton Mill, Inc., and as interveners file herewith their petition for review of the orders and proceedings hereinafter mentioned of the Administrator of the Fair Labor Standards Act and respectfully show unto the Court the following, to-wit:

I.

That Petitioners are both corporations under the laws of the State of Mississippi, the stock of which is owned by Trustees of the Estate of J. W. Sanders, deceased, which estate is being administered in the Chancery Court of the First Judicial District of Hines County, Mississippi. Said corporations being organized under the laws of the State of Mississippi and having their principal offices in the City of Jackson in said State, in the Fifth Circuit and within the jurisdiction of this Honorable Court.

II.

That the claims of the Petitio ers as herein set out have questions of law and fact in common with the main action, and it is in the interest of justice and expedition that petitioners intervene in said main action.

III.

That Petitioners are and have been for many years engaged in the business of operating cotton mills in the

State of Mississippi and is engaged in the first processing, manufacturing, selling and shipping of cotton goods in commerce within the purview of the definition of the Textile Industry as defined by the said administrator in the order herein mentioned, and also they are employers employing employees engaged in said industry and are persons aggrieved by the said order of the administrator and desire to obtain a review of said order as provided by Section 10 and the other provisions of the Fair Labor Standards Act of 1938, (29 U. S. C. A. 210, etc.).

IV.

That Petitioners pursuant to provisions of said Act are paying their employees a minimum wage of 25¢ per hour, which minimum will be increased to 30¢ per hour on and after October 24, 1939, by operation of said Act.

V.

That on September 29, 1939, the administrator of said Act assuming to act under its terms made and entered an order approving and adopting the recommendation of a Committee theretofore appointed by him and known as Industry Committee #1, which recommendation was by said Committee filed with the administrator on or about May 23, 1939, and by which recommendation and the order approving same, it is provided that these petitioners will be forced to pay to their employees a minimum wage of 32½¢ per hour on and after October 24, 1939. Reference is hereby made to the said order of the administrator together with the findings and opinion supporting same and the report of both the majority and minority of said Industry Committee #1 to the extent as if they were copied at length herein.

VI.

That Petitioners are and were at all times mentioned herein members of the Cotton Manufacturers Association and through said Association appeared and protested before said Committee and before the administrator against the taking of the actions and the making of the recommendations and entry of the orders herein complained of, and in addition to the objections filed by Petitioners they adopt and make their own the actions of the said Association and its representatives, and they further adopt the averments of the petition filed herein by Opp Cotton Mills, Inc., and they rely on all of the points and grounds of opposition to the said order and proceedings made or set up in said petition or by said association, and also those incorporated in the minority report of said Industry Committee #1; and they say that all of the objections raised by these petitioners have been urged before the administrator.

VII.

That the said order of the administrator so approving the recommendation of Industry Committee #1 was and is void and illegal and uninforceable for the following reasons, to-wit:

(A) Said administrator had no jurisdiction to consider said recommendation of said Industry Committee or to act thereon, to approve the same, or to enter said order.

(B) Said Industry Committee was not appointed or constituted in accordance with the provisions of said Act, nor with due regard to the geographical regions in which the Industry was and is carried on; and a majority of

said Committee was appointed from the Eastern and Northern sections (non-cotton growing States) of the country whereas a majority of the textile industry is carried on in the South (cotton growing States), and the employee representatives on the Committee were not representative of the employees in the industry. Reference is made to the administrative orders appointing said Committee as fully as if said orders were copied at length herein.

(C) That the report and recommendation of said Industry Committee was not made in accordance with law and with the provisions of the said Act.

(D) That the report and recommendation of said Industry Committee were and are not supported by the evidence presented to said Committee and that there was no substantial legal evidence on which the recommendation of said Committee was based, but that the findings and recommendations of the Committee represented the opinions, prejudices and predilections of the Members of said Committee.

(E) That the said Industry Committee did not make a full, fair and complete investigation of the conditions in the Industry, and did not determine from any substantial legal evidence that the minimum wage rate of 32½¢ per hour recommended by it did not substantially curtail employment and did not give a competitive advantage to any group in the Industry or did not substantially curtail employment in such classifications.

(F) That in making its recommendation and determining the minimum wage aforesaid said Industry Com-

mittee did not give due and legal consideration to the factors set out in paragraph 8 of said Act.

VIII.

That in making its said findings and recommendations said Industry Committee did not give due or legal regard or consideration to comparative transportation cost in the North and the South, or taxation or the relative tax burden borne by the industry in the various sections of the country; or the economic consequences of the recommended minimum wage in terms of increased purchasing power; or comparative living costs in the North and South; or the effect of reciprocal trade treaties; or of the effect of the government's program with respect to raw cotton including the effect of the export subsidy; or the effect of the recommended minimum upon small marginal and financially weak mills; or the desirability of classification as provided for in the Act in order to prevent substantial curtailment of employment within such classifications and to avoid conferring a competitive advantage upon any group in the industry; or the effect of the recommended minimum upon possible increase in the use of substitutes for cotton such as paper, jute, etc.; or of comparative living costs or production costs in the various regions; or the effect of labor agreements existing between employers and employees; or of wages paid for work of like or comparable character by employers in the various sections under voluntary maintained minimum wage standards.

IX.

That said order so entered by the administrator approving and adopting said recommendations of said Industry Committee #1 and all of the findings, recommendations, and proceedings had in connection therewith

were and are illegal, void and unenforceable because the said Fair Labor Standards Act as applied and sought to be applied by the said administrator were and are illegal, unconstitutional and void for the following reasons:

(A) By such Act the Congress attempts to delegate and does delegate legislative power to the administrator and Industry Committee in violation of the Constitution of the United States.

(B) By such Act Congress seeks to exercise and does exercise powers which are reserved to the States in violation of the Constitution of the United States, and particularly the 10th Amendment thereof.

(C) Said Act deprives Petitioners of their property without due provision of law in violation of the Constitution of the United States, and particularly the Fifth Amendment therof.

(D) Said Act although purporting to be an exercise by Congress of its power to regulate commerce among the several States is in fact an unconstitutional interference with the right of private employers and employees to contract concerning wages and hours of employment and an attempt on the part of Congress to exert power over purely local matters to which its authority does not extend.

(F) The benefit of all of the provisions of the Constitution of the United States are and have been throughout these proceedings claimed and relied upon by the petitioners.

X.

That these petitioners were unable to develop their case properly in the hearing conducted by the administrator

by reason of the arbitrary and capricious action of the adminnistrator in forcing these petitioners and other cotton mills similarly situated to proceed with the hearing without due preparation, although petitioners repeatedly protested against being rushed into said hearing, and repeatedly requested opportunity to prepare and present their case in orderly and adequate fashion, which requests were arbitrarily denied by the administrator, all as will more fully appear from affidavits filed herein in connection with the petition of Opp Cotton Mills, Inc. By reason thereof these petitioners could not and did not fully present their case, especially with respect to the adverse effect of the recommended wage minimum upon small mills, such as petitioners operate, comparative living costs in the North and the South, the effect of increased prices upon consumption and upon employment.

XI.

That the Department of Labor and the Works Progress Administrator have conducted studies and investigations of living conditions, comparative living costs in the North and in the South and like subjects, and have made known the results of such studies since the hearing by the administrator was adjourned and the additional evidence mentioned in this paragraph and the preceding paragraph is relevant and important to the issues involved and may materially effect the result of the proceeding, and for the reasons stated petitioners were unable to adduce such evidence in the proceeding before the administrator.

XII.

That the mills operated by petitioners were and are situated largely in small towns and rural communities,

and in many cases represent the chief industry of such communities, and their employees were and are obtained largely from the agricultural population of such communities, and were and are not trained by tradition or experience to perform mechanical work like manufacturing in competition with the skilled mechanics employed in mills in other sections of the country.

XIII.

That these petitioners by reason of and situations as herein set forth, and as disclosed by the evidence presented to the administrator will be wholly unable to operate their mills if the recommended minimum wage of 32½¢ per hour should be put into effect, and will be forced to close their mills and throw their employees out of work and greatly injure said employees and the communities in which they live as well as these petitioners; and said minimum wage will confiscate and destroy the mills and property of these petitioners, built up through many years of hard labor and industry.

XIV.

That it was contemplated by Congress in the passage of said Act that proper differentials would be granted and classifications made so as to equalize as far as possible the application of the said Act and to prevent hardships arising from the handicaps recognized in the said Act. That it has been the universal policy of the government in dealing with similar situations to grant differentials and to make special rules applying to various regions and classifications. As instances of this differentials were granted in the enforcement of the NRA Codes and minimum wages for these petitioners and others similarly situated were established on a lower basis than

those obtaining in other parts of the country and under other conditions. Likewise, in the enforcement of the Walsh-Healy Act prevailing wage scales varying by localities and classifications have been applied. The Works Progress Administration has universally established rates of pay in the sections in which petitioners are located, and under conditions which surround them, which are far less than those obtaining for the same work in other parts of the country. All of this has been done in recognition of the fact that varying conditions require differentials and classifications unless the application of this Act and others of like character shall be confiscatory of the property of these petitioners and others. Notwithstanding this established policy of the government, and the clear intention of Congress, the order of the administrator approving the recommendation of said Industry Committee wholly ignore such considerations and refuse to these petitioners and others similarly situated the differentials and classifications requested by them, and to which they are so clearly entitled.

XV.

That under said order of the administrator said minimum wage of 32½¢ per hour will go into effect on October 24, 1939, and that petitioner will be forced to pay their many employees on the basis of such required minimum wage, and will be forced to pay the increase above the legal minimum required thereby to hundreds of employees, most of whom could not be forced to respond to judgments for the recovery thereof, and such recovery could not be had without a multiplicity of suits, and that petitioners will be forced to suffer imparable injury unless this Honorable Court shall grant a stay of the said order as provided in Section 10 of said Act.

XVI.

Petitioners offer and tender to file in Court an undertaking with sureties acceptable to the Court for the payment of the employees of petitioners affected by the order, in the event such order is affirmed of the amount by which the compensation such employees are entitled to receive under the order exceeds the compensation they will actually receive while the stay herein prayed for is in effect; or to pay such amount into registry of this Court, or into some depository to be designated by this Court, or to take such course in the premises as the Court may order.

XVII.

Wherefore premises considered, petitioners pray:

(A) That their petition may be filed and docketed and may be considered as a proper intervention in this suit, or that it may be considered as a separate suit with respect to the issues raised as to the Court may seem best.

(B) That the administrator may be required to certify and file in this Court the record upon which the said order was entered and of the evidence and proceedings before said Industry Committee.

(C) That petitioners may have leave to adduce the additional evidence herein referred to, and to that end that an extension of 60 days be granted to assemble and present additional information necessary for a full and fair hearing and that the case may be referred to the administrator for the taking of such further evidence.

(D) That the Court may grant a stay of the said order of the administrator and may fix the terms under which petitioners shall proceed with respect to the compensation its employees are entitled to receive under said order as compared to the legal minimum; such stay to be effective during the pendency of this proceeding.

(E) That the said order of the administrator may be set aside.

(F) In the event the aforesaid prayer may be denied to remand this cause to the administrator with instructions to rescind his approval of the recommendations of said Industry Committee and to refer the matter of a minimum wage for the textile industry to a new committee constituted in accordance with the requirements of said Act.

(F) That said order may be modified or set aside as to the Court may seem just and that these petitioners may be granted such further and general relief as the premises may warrant.

APONAUG MANUFACTURING CO.,
J. W. SANDERS COTTON MILL, INC.,
Petitioners,
By BEN F. CAMERON,
Attorney.

State of Louisiana,
Parish of Orleans.

Personally appeared before me, the undersigned Clerk of the United States Circuit Court of Appeals for the Fifth Circuit Court, Ben F. Cameron, who makes affidavit that he is attorney of record for petitioners, and is authorized to make this affidavit and that the matters

and things set forth in the foregoing petition are true as therein stated according to the best of his knowledge, information and belief.

BEN F. CAMERON.

Sworn to and subscribed by the said Ben F. Cameron this 20th day of October, 1939.

OAKLEY F. DODD,
Clerk, United States Circuit Court of Appeals.

(Seal)

ORDER ALLOWING PETITION OF APONAUGH MFG. CO. & J. W. SANDERS COTTON MILL, INC., TO BE FILED.

Filed Oct. 20, 1939.

A petition of Intervention of Aponaugh Mfg. Co. and J. W. Sanders Cotton Mill, Inc., for review of the order of the Administrator of the Wage and Hour Division, Department of Labor, entered on September 29th, 1939, "In the Matter of the Recommendation of Industry Committee No. 1 for Minimum Wage Rates in the Textile Industry", having been presented to this Court:

It is Ordered that said petition of Intervention be filed in the above entitled and numbered cause, as of October 20, 1939; and

It is Further Ordered that a copy of this order and said petition of Intervention be forthwith served upon the Administrator of the Wage and Hour Division, Department of Labor.

RUFUS E. FOSTER,
United States Circuit Judge.

Oct. 20/39.

ORDER STAYING PROCEEDINGS UPON FURNISHING BOND.

Filed Oct. 20, 1939.

Upon Considering the petition of Aponaug Manufacturing Company, a corporation, and J. W. Sanders Cotton Mill, Inc., a corporation, for leave to intervene in said cause, it is Ordered that said leave be, and it is hereby, granted, and said Aponaug Manufacturing Company and J. W. Sanders Cotton Mill, Inc., are admitted as petitioners in said cause.

Upon considering the petition of said Aponaugh Manufacturing Company and J. W. Sanders Cotton Mill, Inc., for a stay of the order of the Administrator of the Wage and Hour Division of the Department of Labor, entered September 29, 1939, which order approved the recommendation of Industry Committee #1 fixing minimum wages at 32½¢ per hour effective October 24, 1939, for the Textile Industry, it is Ordered that said petition be, and it is hereby, granted, and said stay is hereby Ordered during the pendency of this suit and in so far as each of said petitioners is concerned, upon each of said intervening petitioners filing in Court an undertaking in the sum of $10,000.00, payable to Oakley F. Dodd, Clerk, for the benefit of all interested parties, with a surety or sureties to be approved by the Clerk, for the payment to the employees of each of said petitioners affected by the order, in the event such order is affirmed, of the amount by which the compensation such employees are entitled to receive under the order exceeds the compensation they actually receive while such stay is in effect.

So Ordered, this 20th day of October, A. D. 1939.

RUFUS E. FOSTER,
United States Circuit Judge.

Recital.

Intervention petitions, with similar averments, were filed on behalf of the following, and that orders allowing interventions and stay orders were entered just as in the case of Aponaugh petition:

10/23/39, J. F. Ames, doing business as Selma Manufacturing Company.

10/24/39, Alabama Mills, Inc.

10/24/39, Acworth Mills.

10/24/39, Micolas Cotton Mills.

10/24/39, Lane Cotton Mills.

10/24/39, Berryton Mills.

10/24/39, Laurel Mills, Inc.

10/25/39, The Alden Mills.

10/28/39, The Jefferson Mills.

11/2/39, Geneva Cotton Mills.

11/2/39, D. H. Morris, Jr., and Joel E. Johnson, d/b/a/.

11/2/39, Bama Cotton Mills.

11/2/39, Poulan Cotton Mills.

12/1/39, J. C. Sanders Cotton Mills, Inc. (no stay order requested or allowed).

Any other pleadings which may be on file by any petitioner or intervener prior to the time of printing.

MOTION OF BERRYTON MILLS, INTERVENER AND 13 OTHER INTERVENERS FOR LEAVE TO AMEND THEIR PETITION OF INTERVENTION.

Filed Jan. 2, 1940.

Come the Interveners, Berryton Mills, The Jefferson Mills, Geneva Cotton Mills, Bama Cotton Mills, Poulan Cotton Mills, Selma Manufacturing Company, Alabama Mills, Inc., Acworth Mills, Micolas Cotton Mill, Lane Cotton Mills Company, Aponaug Manufacturing Company, J. W. Sanders Cotton Mill Company, Inc., Laurel Mills, Inc., and J. C. Sanders Cotton Mill, Inc., and respectfully ask leave of the Court to amend their respective petitions of intervention in accordance with the amendment herewith exhibited to the Court.

BEN F. CAMERON,
Attorneys for said Interveners.

AMENDMENT TO INTERVENTION PETITIONS.

Filed Jan. 2, 1940.

To the Honorable the Circuit Court of Appeals for the Fifth Circuit:

Come Berryton Mills, The Jefferson Mills, Geneva Cotton Mills, Bama Cotton Mills, Poulan Cotton Mills, Selma Manufacturing Company, Alabama Mills, Inc., Acworth Mills, Micolas Cotton Mill, Lane Cotton Mills Company, Aponaug Manufacturing Company, J. W. Sanders Cotton Mill Company, Inc., Laurel Mills, Inc., and J. C. Sanders Cotton Mill, Inc., Interveners, and amending the intervention petitions heretofore filed by them, say:

That petitioners are and were at all times mentioned herein, engaged in the operation of small cotton mills in

the States of Georgia, Alabama, Mississippi and Louisiana, as shown in their petitions, and that said mills belong to the small mill group and are largely located in small communities and largely employ local labor in said communities, drawing their labor supply in most cases from the farms and agricultural communities.

That all of said interveners obtain their cotton in the States in which they do business, and all of them are engaged in the local occupation of manufacturing raw cotton into cotton goods.

That in some instances such cotton goods are manufactured to fill orders theretofore taken, and in other instances such cotton goods are manufactured for storage and for sale in due course of business. That in all instances all sales of cotton goods made by said interveners are made f. o. b. their respective mills. That the only connection any of said mills have with commerce is that when instructions are given by purchasers of goods as to where such goods shall be shipped, a negligible percentage of the employees of said interveners load said goods on vehicles furnished by the purchasers for transportation of such goods to their destination, both in interstate and intrastate commerce.

That the vast majority of the employees of said mills are engaged as stenographers, clerks, bookkeepers, machinists, weavers, spinners, janitors, and in occupations entirely local in character and having to do with manufacturing of raw cotton into cotton goods.

That in most cases the mills operated by interveners constitute the chief industries in small local communities, and said mills cannot be kept in operation unless the relief prayed for in their original intervention petitions should be granted, and if said mills are forced to shut

down, many communities throughout said States will be deprived of one of the chief sources of support of their inhabitants.

That said interveners and their employees are, as herein set out, not engaged in commerce, but are engaged as aforesaid, in the manufacture of cotton goods, which are ultimately shipped in commerce, both interstate and intrastate.

Notwithstanding said facts, the defendant has ruled that that these interveners and the mills so operated by them come within the scope and purview of the Fair Labor Standards Act and the order of the Administrator referred to in the Intervention Petitions, and threatens to enforce, and will enforce, said Act and said order as against these petitioners, and will require these petitioners to conduct their businesses in strict conformity with the terms of the said Act and of the said Order, unless the relief prayed for by them shall be granted.

GORDON McKELVEY,
BEN F. CAMERON,
By BEN F. CAMERON,
Attorneys for Southern Cotton Manufacturers Association.

State of Louisiana,
Parish of Orleans.

Personally appeared before me, the undersigned authority, Ben F. Cameron, who makes affidavit that he is Attorney of Record for each of said Interveners, and is authorized to make this affidavit, and that the matters and things set forth in said amendment are true as therein stated according to the best of his knowledge, information and belief.

BEN F. CAMERON.

Subscribed and sworn to before me this 30th day of December, 1939.

OAKLEY F. DODD,
Clerk of the United States
Circuit Court of Appeals.

(Seal)

ORDER.

In the United States Circuit Court of Appeals for the Fifth Circuit.

Opp Cotton Mills, Inc.,
vs. No. 9313.
Administrator of the Wage and Hour Division of the Department of Labor.

Upon considering the motion of Berryton Mills, The Jefferson Mills, Geneva Cotton Mills, Bama Cotton Mills, Poulan Cotton Mills, Selma Manufacturing Company, Alabama Mills, Inc., Acworth Mills, Micolas Cotton Mill, Lane Cotton Mills Company, Aponaug Manufacturing Company, J. W. Sanders Cotton Mill Company, Inc., Laurel Mills, Inc., and J. C. Sanders Cotton Mill, Inc., Interveners, for leave to amend their intervention petitions heretofore filed herein, it is Ordered that said leave be and it is hereby granted, and said intervention petitions are amended in accordance with the amendment submitted with said motion.

Done at New Orleans, Louisiana, this 2nd day of January, 1940.

RUFUS E. FOSTER,
Judge.

INTERVENING PETITION OF SOUTHERN COTTON MANUFACTURERS ASSOCIATION.

Filed Jan. 2, 1940.

To the Honorable, the Circuit Court of Appeals for the Fifth Circuit:

Comes the petitioner and interveners herein, and respectfully shows unto the Court the following facts, to-wit:

1. That it is an unincorporated association of a group of cotton textile manufacturers operating small cotton mills in the States of Georgia, Alabama, Mississippi, Louisiana and Texas, and that Clarence R. Miller, of Dallas, Texas, is President, and D. H. Morris, Jr., of Geneva, Alabama, is Secretary of said Association.

2. That said Association was formed for the purpose of protecting the interests of the owners of small cotton mills in said States, and is engaged in protecting and promoting the said interests of said small cotton mills.

3. That it desires to intervene in this suit on behalf of the small cotton mills, members of said Association, and situated as aforesaid in said States, to the end that the interests of said mills belonging to said Association may be protected and promoted by the prosecution of this suit.

4. It adopts all and singular the averments of the petition of the Opp Cotton Mills, Inc., and all amendments and supplements thereto as fully as if all of said averments were set out at length herein; and it likewise adopts, all and singular, the averments of the intervening petitions and amendments which have been filed in this cause.

5. It represents that the situation with respect to the small cotton mills in said States is quite different from that maintaining with respect to the mills of the New England and Eastern States, and with respect to the larger mills of the South, and that said small mills will be under great handicaps not borne by said other mills, all as will more fully appear from the evidence appearing in the record given by or on behalf of the said small mills of said States or in their behalf.

Petitioner therefore prays that it may be permitted to intervene in this cause on behalf of the said small mills which are members of said Association, and that this Honorable Court may grant to said member mills the relief prayed for in the petition of the Opp Cotton Mills, Inc., and in the intervening petitions filed herein.

McCORVEY, McLEOD, TURNER & ROGERS,
By GORDON T. McKELVEY,
GORDON T. McKELVEY,
(Gordon McKelvey)
BEN F. CAMERON,
(Ben F. Cameron)
Attorneys for Southern Cotton Manufacturers Association.

ORDER PERMITTING INTERVENTION OF SOUTHERN COTTON MANUFACTURERS ASSOCIATION.

Filed Jan. 2, 1940.

Upon considering the petition of Southern Cotton Manufacturers Association to intervene herein, it is ordered that the said petition be, and it is, granted, and said South-

ern Cotton Manufacturers Association is permitted to intervene.

It is further ordered that a copy of said petition be served on the Administrator.

Done and ordered this 2nd day of January, 1940.

RUFUS E. FOSTER,
Judge.

ADMINISTRATIVE ORDER NO. 1.

Appointment of Industry Committee No. 1.

1. By virtue of and pursuant to the authority vested in me by the "Fair Labor Standards Act of 1938", I, Elmer F. Andrews, Administrator of the Wage and Hour Division, Department of Labor, do hereby appoint for the textile industry (as such industry is defined in paragraph 2) an industry committee composed of the following representatives:

For the Public:
Donald Nelson, Chairman, Chicago, Ill.;
Grace Abbott, Grand Island, Nebr.;
P. O. Davis, Auburn, Ala.;
E. L. Foshee, Sherman, Texas.;
Louis Kirstein, Boston, Mass.;
George Fort Milton, Chattanooga, Tenn.;
George W. Taylor, Philadelphia, Pa.

For the Employees:
Paul Christopher, Charlotte, N. C.;
Francis P. Fenton, Boston, Mass.;
Sidney Hillman, New York City, N. Y.;
R. R. Lawrence, Atlanta, Ga.;

Elizabeth Nord, Manchester, Conn.;
Emil Rieve, Philadelphia, Pa.;
H. A. Schrader, Washington, D. C.

For the Employers:
G. Edward Buxton, Providence, R. I.;
Charles A. Cannon, Kannapolis, N. C.;
Robert Chapman, Spartansburg, S. C.;
John R. Cheatham, Griffin, Ga.;
John Nickerson, New York City, N. Y.;
Seabury Stanton, New Bedford, Mass.;
R. R. West, Danville, Va.

Such representatives having been appointed with due regard to the geographical regions in which such industry is carried on.

2. As used in this order, the term "textile industry" means

(a) The manufacturing or processing of yarn or thread and all processes preparatory thereto, and the manufacturing, bleaching, dyeing, printing and other finishing of woven fabrics (other than carpets and rugs) from cotton, silk, flax, jute or any synthetic fabric, or from mixtures of these fibries; except the chemical manufacturing of synthetic fibre and such related processing of yarn as is conducted in establishments manufacturing synthetic fibre;

(b) The manufacturing of batting, wadding or filling and the processing of waste from the fibres enumerated in clause (a);

(c) The manufacturing, bleaching, dyeing, or other finishing of pile fabrics (except carpets and rugs) from any fibre or yarn;

(d) The manufacturing, bleaching, dyeing, or printing of knitted fabrics (other than hosiery or wool and wool mixed overcoatings and suitings) from any fibre or yarn;

(e) The manufacturing or finishing of braid, net or lace from any fibre or yarn;

(f) The manufacturing of cordage, rope or twine from any fibre.

3. The industry committee herein created, in accordance with the provisions of the "Fair Labor Standards Act of 1938" and rules and regulations promulgated thereunder, shall investigate conditions in the textile industry and recommend to the Administrator minimum wage rates for all employees thereof who within the meaning of said act are "engaged in commerce or in the production of goods for commerce", excepting employees exempted by virtue of the provisions of Section 13 (a) and employees coming under the provisions of Section 14.

(Signed) ELMER F. ANDREWS,
Administrator, Wage and Hour Division, Department of Labor.

Washington, D. C.,
September 13, 1938.

ADMINISTRATIVE ORDER NO. 2.

Wage and Hour Division.
Department of Labor.
Convening of Textile Industry Committee.

Whereas, by Administrative Order No. 1 dated September 13, 1938, I have heretofore appointed for the textile

industry (as defined in said Order), an industry committee composed of the following representatives:

For the Public:
Donald Nelson, Chairman, Chicago, Illinois.
Grace Abbott, Grand Island, Nebraska.
P. O. Davis, Auburn, Ala.
E. L. Foshee, Sherman, Texas.
Louis Kirstein, Boston, Mass.
George Fort Milton, Chattanooga, Tenn.
George W. Taylor, Philadelphia, Pa.

For the Employees:
Paul Christopher, Charlotte, N. C.
Francis P. Fenton, Boston, Mass.
Sidney Hillman, New York, N. Y.
R. R. Lawrence, Atlanta, Ga.
Elizabeth Nord, Manchester, Conn.
Emil Rieve, Philadelphia, Pa.
H. A. Schrader, Washington, D. C.

For the Employers:
G. Edward Buxton, Providence, R. I.
Charles A. Cannon, Kannapolis, N. C.
Robert Chapman, Spartansburg, S. C.
John R. Cheatham, Griffin, Ga.
John Nickerson, New York, N. Y.
Seabury Stanton, New Bedford, Mass.
R. R. West, Danville, Va.

Now therefore, I, Elmer F. Andrews, Administrator of the Wage and Hour Division, Department of Labor, by virtue of authority vested in me by Section 8 (a) of the Fair Labor Standards Act of 1938, do hereby convene the said textile industry committee, to meet in Conference Room No. 3135, Department of Labor Building, Washington, D. C. on October 11, 1938 at 11:00 A. M.

The said committee will proceed forthwith, in accordance with the provisions of the Fair Labor Standards Act of 1938 and Rules and Regulations, Series 1, *dated Sept. 22,* to investigate conditions in the textile industry and recommend to the Administrator minimum wage rates for all employees thereof who within the meaning of said Act are "engaged in commerce or in the production of goods for commerce" excepting employees exempted by the provision of Section 13 (a) and employees coming under the provisions of Section 14.

(Signed) .....,
Administrator, Wage and Hour Division, Department of Labor.

Washington, D. C.,
September 26, 1938.

For release afternoon papers,
Wednesday, December 21, 1938.

ADMINISTRATIVE ORDER NO. 6.

Amending Definition of "Textile Industry" as Contained in Administrative Order No. 1 Appointing Industry Committee No. 1.

By virtue of and pursuant to the authority vested in me by the "Fair Labor Standards Act of 1938", and pursuant to recommendations submitted to me by Industry Committee No. 1, I, Elmer F. Andrews, Administrator of the Wage and Hour Division, U. S. Department of Labor, do hereby amend the definition of the term "textile industry" as contained in paragraph 2 of Administrative Order No. 1, dated September 13, 1938, to read as follows:

As used in this order, the term "textile industry" means

(a) The manufacturing or processing of yarn or thread and all processes preparatory thereto, and the manufacturing, bleaching, dyeing, printing and other finishing of woven fabrics (other than carpets and rugs) from cotton, silk, flax, jute or any synthetic fibre, or from mixtures of these fibres; except the chemical manufacturing of synthetic fibre and such related processing of yarn as is conducted in establishments manufacturing synthetic fibre;

(b) The manufacturing of batting, wadding or filling and the processing of waste from the fibres enumerated in clause (a);

(c) The manufacturing, bleaching, dyeing, or other finishing of pile fabrics (except carpets and rugs) from any fibre or yarn;

(d) The processing of any textile fabric, included in this definition of this industry, into any of the following products: bags; bandages and surgical gauze; bath mats and related articles; bedspreads; blankets; diapers; dish-cloths, scrubbing cloths and wash-cloths; sheets and pillow cases; table-cloths, lunch-cloths and napkins; towels; and window-curtains;

(e) The manufacturing or finishing of braid, net or lace from any fibre or yarn;

(f) The manufacturing of cordage, rope or twine from any fibre.

Signed at Washington, D. C., this 19th day of December 1938.

ELMER F. ANDREWS,
(Elmer F. Andrews)
Administrator Wage and Hour Division, Department of Labor.

For Immediate Release, Thursday,
January 5, 1939.

ADMINISTRATIVE ORDER NO. 10.

U. S. Department of Labor,
Wage and Hour Division,
Washington, D. C.

Acceptance of Resignations from and Appointments to Industry Committee No. 1.

By virtue of and pursuant to the authority vested in me by the Fair Labor Standards Act of 1938, I, Elmer F. Andrews, Administrator of the Wage and Hour Division, Department of Labor,

1. Do hereby accept the resignation of Louis E. Kirstein from Industry Committee No. 1 for the textile industry and do appoint in his stead as representative for the public on such committee, Fred Lazarus, Jr., of Columbus, Ohio, and

2. Do hereby accept the resignation of Seabury Stanton from Industry Committee No. 1 for the textile industry, and do appoint in his stead as representative for the employers on such committee, Allan Barrows of New Bedford, Massachusetts.

Signed at Washington, D. C., this 4th day of January, 1939.

ELMER F. ANDREWS,
(Elmer F. Andrews)
Administrator Wage and Hour Division, Department of Labor.

For immediate release,
Monday, May 22, 1939.

ADMINISTRATIVE ORDER NO. 25.

United States Department of Labor,
Wage and Hour Division,
Washington, D. C.

Amending Definition of "Textile Industry" Contained in Administrative Order No. 1 as Amended by Administrative Order No. 6:

By virtue of and pursuant to the authority vested in me by the Fair Labor Standards Act of 1938, I, Elmer F. Andrews, Administrator of the Wage and Hour Division, Department of Labor, do hereby amend the definition of the term "textile industry", as contained in paragraph 2 of Administrative Order No. 1, dated September 13, 1938, as amended by Administrative Order No. 6, dated December 19, 1938, to read as follows:

(a) The manufacturing or processing of yarn or thread and all processes preparatory thereto, and the manufacturing, bleaching, dyeing, printing and other finishing of woven fabrics (other than carpets and rugs) from cotton, silk, flax, jute or any synthetic fiber, or from mixtures of these fibers; or from such mixtures of these fibers with wool or animal fiber (other than silk) as are specified in clauses (g) and (h); except the chemical manufacturing of synthetic fiber and such related processing of yarn as is conducted in establishments manufacturing synthetic fiber;

(b) The manufacturing of batting, wadding or filling and the processing of waste from the fibers enumerated in clause (a);

(c) The manufacturing, bleaching, dyeing, or other finishing of pile fabrics (except carpets and rugs) from any fiber or yarn;

(d) The processing of any textile fabric, included in this definition of this industry, into any of the following products: bags; bandages and surgical gauze; bath mats and related articles; bedspreads; blankets; diapers; dish-cloths, scrubbing cloths and wash-cloths; sheets and pillow cases; table-cloths, lunch-cloths and napkins; towels; and window-curtains;

(e) The manufacturing or finishing of braid, net or lace from any fiber or yarn;

(f) The manufacturing of cordage, rope or twine from any fiber or yarn;

(g) The manufacturing or processing of yarn or thread by systems other than the woolen system from mixtures of wool or animal fiber (other than silk) with any of the fibers designated in clause (a), containing not more than 45 percent by weight of wool or animal fiber (other than silk);

(h) The manufacturing, bleaching, dyeing, printing or other finishing of woven fabrics (other than carpets and rugs) from mixtures of wool or animal fiber (other than silk) containing not more than 25 percent by weight or wool or animal fiber (other than silk), with any of the fibers designated in clause (a), with a margin of tolerance of 2 percent to meet the exigencies of manufacture.

Signed at Washington, D. C., this 22nd day of May, 1939.

ELMER F. ANDREWS,
(Elmer F. Andrews)
Administrator Wage and Hour Division, Department of Labor.

REPORT AND RECOMMENDATION
of
INDUSTRY COMMITTEE NO. 1
for the
TEXTILE INDUSTRY
to the
ADMINISTRATOR OF THE WAGE AND HOUR DIVISION
of the
UNITED STATES DEPARTMENT OF LABOR.

REPORT AND RECOMMENDATION.

General Statement.

In compliance with Administrator Order No. 1, issued September 13, 1938, and Administrative Order No. 25, issued May 22, 1939, Industry Committee No. 1 for the Textile Industry recommends to the Administrator that:

The minimum wage for employees in the Textile Industry as defined by Administrative Order No. 25, dated May 22, 1939, who are engaged in commerce or in the production of goods for commerce within the meaning of the Fair Labor Standards Act of 1938, be established at thirty-two and one-half cents (32½¢) per hour. In transmitting this recommendation the Committee suggests that:

1. Any wage order resulting from the Committee's recommendation as set forth above be made effective July 1, 1939, or as soon thereafter as practicable.

2. Six months after the effective date of such wage order, this or another committee for this industry be appointed to observe the effect upon this industry of the

minimum wage established thereby and to make such further recommendations as it deems advisable.

The majority of the Committee concurs in this recommendation after having spent more than six months in studying testimony and facts submitted by the Bureau of Labor Statistics, the Economic Section of the Wage and Hour Division, and by representatives of both the employers and employees in the industry. In order to satisfy the provisions of the Fair Labor Standards Act, the Committee, in arriving at its recommendation, was required to, and did, carefully weigh this evidence.

The task which confronted the Committee was not an easy one. For almost two decades the textile industry has been recognized as a distressed industry. It has been beset with a fluctuating price structure which throws the industry rapidly from profit to loss. Over-capacity, competition with products of low-wage countries, and increasing competition from substitute fibres and materials are some of the factors that make for instability in the industry. The Committee recognizes that wages in the textile industry have been for a long time among the lowest paid by the major manufacturing industries of the nation, and that the textile industry's stability may well be attributable in part to the regrettable tendency of some of its members to depress its chronically low wage standards. The Committee has reason to believe that its recommendation of a minimum wage of 32½ cents per hour will tend to give greater stability and general improvement to the industry.

The Fair Labor Standards Act of 1938 directs (Section 8 (b)) each industry committee to "investigate conditions in the industry * * * and to recommend to the Administrator the highest minimum wage rates for the industry which it determines, having due regard to economic and competitive conditions, will not substantial-

ly curtail employment in the industry." It also directs (Section 8 (c)) that

"The industry committee for any industry shall recommend such reasonable classifications within any industry as it determines to be necessary for the purpose of fixing for each classification within such industry the highest minimum wage rate (not in excess of 40 cents an hour) which (1) will not substantially curtail employment in such classification and (2) will not give a competitive advantage to any group in the industry, and shall recommend for each classification in the industry the highest minimum wage rate which the committee determines will not substantially curtail employment in such classification. In determining whether such classifications should be made in any industry, in making such classifications, no classification shall be made, and no minimum wage shall be fixed, solely on a regional basis, but the industry committee * * * shall consider among other relevant factors the following:

(1) competitive conditions as affected by transportation, living, and production costs;

(2) the wages established for work of like or comparable character by collective labor agreements negotiated between employers and employees by representatives of their own choosing; and

(3) the wages paid for work of like or comparable character by employers who voluntarily maintain minimum-wage standards in the industry.

No classification shall be made under this section on the basis of age or sex."

In its deliberations conducted in accordance with the statutory provision just quoted, the Committee searched for all available evidence that would throw light on the effects of different wage rates on employment. The effects of several suggested minima on the industry were discussed in detail by authorized representatives from practically all interests concerned. The view of the public was represented by converters, wholesalers, garment manufacturers, retailers, and others concerned with the distribution of piece goods, articles of apparel, and articles of domestic utility.

The geographical distribution of the industry from Maine to Texas presents an involved situation in the matter of transportation costs, each section having compensating advantages and disadvantages. Mills in any one area undoubtedly enjoy transportation advantages to some markets over mills located in other parts of the country. To other markets these mills may operate under a shipping cost disadvantage as compared with mills situated elsewhere. The Committee devoted considerable time to the study of differences in transportation costs. The conclusion was reached that mills in no one section of the country operate under disadvantages of such a nature as to warrant classification of that section for differential treatment in the matter of minimum wages.

Testimony was heard based on a comprehensive study of cost of living made by the W. P. A. in collaboration with the Bureau of Labor Statistics. The Committee determined that to set up area classifications of minimum wage rates on the basis of cost of living differences would be impractical and undesirable for the following reasons: (1) the evidence indicated that the average cost of an equivalent standard of living varied but slightly among the regions; (2) variations in cost between cities within a region were much greater than variations among regions.

Any attempt, therefore, to vary minimum wages on the basis of living costs would require scores of differentials. Futhermore, the gross differences in the cost of living seems to us relatively unimportant, in view of the fact that the minimum wage we recommend provides, at best, a very low level of living.

The estimated number of employees in the cotton, rayon, and silk industries total about 650,000 people, of whom about two-thirds are in cotton mills. In cotton mills, labor cost constitutes from 25% to 45% of total manufacturing cost, depending on the character of the goods and the fluctuating cost of cotton. Figures submitted by the Bureau of Labor Statistics indicate that the average hourly wage in the southern cotton textile area (containing about 75 percent of the cotton textile employees) was 36.6 cents per hour in August, 1938, and in the northern area 44.6 cents per hour. The majority of employees in the rayon and silk industries are employed in the northern area, and in most branches receive a slightly higher average hourly wage than the northern cotton mill employees. The recommended increase in the present statutory minimum of 25 cents to 32½ cents per hour is estimated to affect directly about 120,000 employees in the cotton industry alone. A majority of those directly affected are employed in the lower wage area.

Your Committee estimates that a minimum hourly wage of 32½ cents will require an average increase of not more than 9.3 per cent in the payrolls of the mills in the low-wage southern area. The mills in this region now average approximately 36.6 cents per hour, and the proposed minimum should not raise this average hourly rate to more than 40 cents per hour. In fact, the increase may well be less than that stated here.

One mill owner testified that a 32½-cent minimum would increase his wage bill by about 15 percent but it should be noted that his present average hourly wage is 33½ cents per hour. This witness stated that a 32½ cent hourly minimum would raise his average to 38-3/4 cents per hour.

These estimates of increase in average wages—and hence in production costs—are supported by much evidence given to the Committee, including a hypothetical payroll made up by a manufacturer now operating a plant in the lower-wage area. Labor costs, of course, are only one element in total manufacturing costs. The Committee believes that a 32½ cent hourly minimum will increase the total manufacturing cost of the average low-wage mill by something less than 4 percent (9.3 percent wage increase x 36 percent labor cost equals 3.35 percent). To illustrate the effect on total cost, let us take a well-known print cloth; 39" 80/80, 4.00 used in vast quantities in the house dress field. It is now selling (below cost) at about six cents per yard. The estimated increase in production cost, due to a 32½ cent minimum would, we believe, be about one-quarter of a cent for the grey goods manufacturer.

The Committee considers that the testimony of converters, cutters, and retailers supports the belief that the increased manufacturing costs required by a 32½-cent minimum will not result in decreased consumption and consequent unemployment. Prices in cotton grey goods, bleached, dyed and printed piece goods, and manufactured textile articles, such as sheets and pillow cases, overalls, work shirts, and cotton house dresses, have fluctuated in the past six years from their lows to their highs from 100 percent to 300 percent. In comparison with the adjustments that the industry must constantly make as conditions change, the adjustment to the recommended mini-

mum should be relatively slight. Indeed, the floor to wages recommended by this Committee will introduce at least one element of stability into the textile industry picture.

Testimony offered by representatives of labor did tend to show that, as far as collective bargaining had established a minimum, it was higher than that now being paid by the industry in general. In several specialized branches the minimum in union contracts is considerably above this level. The proposed minimum is in line with the general minimum wage level established by collective bargaining in some of the industrial groups under the Committee's jurisdiction.

The minimum wage recommendation of this Committee will not remove the general differentials in wages that exist among the different geographical areas in which the industry is located, although these differentials probably will be narrowed to some extent. There is no evidence to show that the recommended minimum will disturb the present regional distribution of the textile industry appreciably.

The Committee was forced to consider the fact that it was dealing with an industry with excess manufacturing capacity, and that liquidation of mills and consequent unemployment have been present in marked degree in the high wage divisions of the industry for the past fifteen years. Such struggle for survival must apparently continue until a more balanced market emerges. The majority of the Committee is obviously not able to state, with proof derived from experience, that substantial unemployment would result in the textile industry if a higher minimum hourly wage than 32½ cents per hour was made effective at once. It is the opinion of the majority of the

Committee, however, that any higher minimum wage, effective at this time, might create readjustments affecting employment and competitive conditions to a degree greater than that which, we believe was contemplated by Congress in the passage of the Fair Labor Standards Act.

The final reason for the adoption by the Committee of a cautious approach to the problem of recommending a minimum wage grew out of its consideration of certain imponderable elements in the textile picture. The Committee, for example, was mindful of the fact that the possibility existed of abnormal importations of textile products from countries with labor standards lower than our own. This may not happen, of course; the possibility, however, exerted an influence on the decision of the Committee. In the same way, the possible inroads of substitute products was taken into account.

The Committee, in a word, believes that its wage recommendation was made after careful consideration not only of those factors capable of measurement, but also of those that exist merely as possibilities in the changing conditions under which this great industry functions. An analysis of the proceedings and of the evidence in support of the recommendation of the Committee follows.

Statement of the Proceedings

On September 13, 1938, the Administrator of the Wage and Hour Division of the Department of Labor appointed Industry Committee No. 1 for the textile industry consisting of seven persons representing the public, a like number of persons representing employees in the industry, and a like number of persons representing employers in the

industry.[1] The Committee was directed to investigate, in accordance with the provisions of the Fair Labor Standards Act of 1938 and rules and regulations promulgated thereunder, conditions in the textile industry and to recommend to the Administrator minimum wage rates for employees in such industry.

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[1] In Administrative Order No. 1, 3 F. R. 2313, Donald Nelson, Vice President, Sears, Roebuck & Company, Chicago, Ill., was appointed Chairman of Industry Committee No. 1. Other public members appointed were:
Grace Abbott, University of Chicago, Chicago, Ill.
P. O. Davis, Director of Extension Service, Alabama Polytechnic Institute, Auburn, Alabama.
E. L. Foshee, Iron Rock Oil Company, Sherman, Texas.
Louis E. Kirstein, Vice President, Wm. Filene's Sons Co., Boston, Mass.
George Fort Milton, President and General Manager, Chattanooga News, Chattanooga, Tenn.
George W. Taylor, Professor of Industry, University of Pennsylvania, Philadelphia, Pa.
The members appointed to represent employees in the industry were:
Paul Christopher, Technical Adviser, Textile Workers Organizing Committee, Shelby, N. C.
Francis P. Fenton, Director of Organization, American Federation of Labor, Washington, D. C.
Sidney Hillman, General President, Amalgamated Clothing Workers Union, New York City,
R. R. Lawrence, Southeastern Director, Textile Workers Organizing Committee, Atlanta, Ga.
Elizabeth Nord, Textile Workers Organizing Committee, Manchester, Conn.
Emil Rieve, Executive Director, Textile Workers Organizing Committee, Philadelphia, Pa.
H. A. Schrader, American Federation of Labor, Washington, D. C.
The members appointed to represent employers in the industry were:
G. Edward Buxton, President, Androscoggin Mills, Providence, R. I.
Charles A. Cannon, President, Cannon Mills Co., Kannapolis, N. C.
Robert H. Chapman, Vice President, Inman Mills, Spartanburg, S. C.
John R. Cheatham, President and Treasurer, Georgia Kinkead Mills, Griffin, Ga.
John Nickerson, Cheney Bros. Mfgs., Manchester, Conn.
Seabury Stanton, Treasurer, Hathaway Mfg. Co., Inc., New Bedford, Mass.
R. R. West, President, Riverside and Dan River Cotton Mills, Danville, Va.
Subsequently, on January 4, 1939, the Administrator, by Administrative Order No. 10, appointed Fred Lazarus, Jr., Vice President and Treasurer, F. & R. Lazarus Co., Columbus, Ohio, and Allan Barrows, Treasurer, Gosnold Mills Corp., New Bedford, Mass., to the Committee in place of Mr. Kirstein and Mr. Stanton, respectively, who had resigned.

The Committee held its first meeting on October 11 and 12, 1938, at Washington, D. C.[1] An explanation of the extent of its jurisdiction was given to the Committee by A. F. Hinrichs, Chief Economist of the Bureau of Labor Statistics of the United States Department of Labor. The Committee then took under consideration a letter from the Administrator to Mr. Nelson, the Chairman of the Committee, requesting the Committee's advice and recommendations concerning the advisability of adding to the jurisdiction of the Committee certain additional textile products. A subcommittee, known as Subcommittee A, was established to consider the question of the extent to which mixtures of wool and other fibers should be included within the jurisdiction of the Committee and another subcommittee, Subcommittee B, was designated to consider the advisability of adding to the Committee's jurisdiction the further processing carried on in textile plants of certain woven and knitted fabrics into finished goods.[2]

A second meeting of the Committee was held on December 14, 15, 16, and 17, 1938, at Washington, D. C. Recommendations of Subcommittees A and B were adopted by the Committee and forwarded to the Administrator.[3] On

[1] The Committee was convened by the Administrator by Administrative Order No. 2, dated September 26, 1938.

[2] An additional subcommittee, designated as Subcommittee C, was appointed to consider the question of what additional information was needed by the Committee. After a meeting held in Washington, D. C., on October 26 and 27, 1938, at which reports from the Bureau of Labor Statistics were received, Subcommittee C requested the Wage and Hour Division to submit to the Committee information with respect to transportation costs, costs of living, and competitive relationships in the textile industry.

[3] Subcommittee A met October 25, 1938, in New York City and there concluded that it was improper for a Subcommittee of Committee No. 1 to recommend any inclusion of woolen manufacturing within its jurisdiction without consultation with an industry committee for the woolen industry. It, therefore, recommended that a separate committee should be appointed for the woolen industry; that subcommittees of the woolen industry committee and of Industry Committee No. 1 should be appointed to agree, if possible, upon a line of demarcation between the jurisdictions of the respective com-

December 19, 1938, the Administrator, in accordance with these recommendations, by Administrative Order No. 6, removed knitted fabrics from the jurisdiction of the Committee and added to its jurisdiction some 15 other products.

At its second meeting, referred to in the preceding paragraph, the Committee heard testimony from representatives of various interested parties including the Cotton Textile Institute, the National Association of Cotton Manufacturers, the Committee of Southwest Textile Manufacturers, the Textile Workers Organizing Committee and the American Federation of Labor.[1] Briefs and other written memoranda were also received by the Committee from a number of persons.[2]

At the conclusion of the above session, the Committee designated another subcommittee, known as Subcommittee D, to assemble such additional information and to hear such testimony as was necessary to enable the Committee to arrive at a wage recommendation. Subcommittee D met in Washington, D. C. on January 24, 1939, and again on March 1 and 2, 1939, at which times further information was received from the Economic Section of the Division and from additional witnesses who had been invited to appear, including representatives of the American Associa-

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mittees keeping in mind the probable differential in the minimum wage recommendations to be made by each committee; and that the Administrator should then redefine the jurisdiction of the two committees as nearly in accordance with such agreed line, if any, as he should deem advisable.

Subcommittee B held meetings in Washington, D. C., on October 12 and 13, November 1, 2, 3, and 4, and December 9 and 10, 1938, at which meetings oral and written testimony from 57 interested person was received. See Appendix for list of persons notified and persons appearing and testifying.

[1] See Appendix B and C for complete list of persons notified and persons appearing and testifying at meetings of committee and its subcommittees.

[2] See Appendix for complete list of written material received and considered by the Committee and its subcommittees.

tion of Cotton Manufacturers and of certain chain stores, converters, wholesalers, and marginal mills.[1]

The Committee met again in Washington, D. C., on March 21, 1939, for the purpose of acting finally upon the matter of possible classification within the industry, and of deciding tentatively, pending a final redefinition of its jurisdiction as affected by that of the Woolen Committee,[2] upon a minimum wage recommendation. After extended discussion and deliberation, the Committee, by a vote of 13 to 6, with the Chairman not voting, adopted a resolution favoring a minimum wage of 32½ cents an hour for the Textile Industry.[3] Motions for various classifications, including a motion to grant a wage differential of 2½ cents an hour to mills located in the Southwestern Freight Area, were defeated.

Thereafter, and pursuant to the recommendation of Subcommittee A, which was adopted by the full Committee [4] and acted upon by the Administrator in Administrative Order No. 11 appointing the Woolen Industry Committee, Subcommittee A met April 4, 1939, in New York City, with a Subcommittee of the Woolen Industry Committee. For the reason that the Subcommittees were not in agreement upon a proper line of demarcation, the two full Committees met May 22, 1939, in Washington, D. C., at the call of their common chairman, Mr. Donald Nelson, and after a joint session of both Committees, each Committee withdrew and adopted a resolution making specific recommendations to the Administrator regarding the redefinition of their respective jurisdictions. The Administrator redefined the jurisdiction of the Textile Committee by Administrative Order No. 25 dated May 22, 1939,[5] and on

[1] See Appendix B and C.
[2] See p. 8, Note 3.
[3] Twenty of the 21 committee members were present at this meeting.
[4] See p. 8, Note 3.
[5] The definition is set forth in full on pp. 11-12 hereof.

May 22, 1939, after discussion and deliberation the Committee adopted, by a vote of 13 to 6 a resolution recommending a minimum wage of 32½ cents an hour for the Textile Industry. In a second resolution the Committee, by a vote of 12 to 4 determined that no wage differential for any classification within the industry should be established.

Scope of Definition

The textile industry was finally defined in Administrative Order No. 25, dated May 22, 1939 as follows:

(a) The manufacturing or processing of yarn or thread and all processes preparatory thereto, and the manufacturing, bleaching, dyeing, printing and other finishing of woven fabrics (other than carpets and rugs) from cotton, silk, flax, jute or any synthetic fiber, or from mixtures of these fibers; or from such mixtures of these fibers with wool or animal fiber (other than silk) as are specified in clauses (g) and (h); except the chemical manufacturing of synthetic fiber and such related processing of yarn as is conducted in establishments manufacturing synthetic fiber;

(b) The manufacturing of batting, wadding or filling and the processing of waste from the fibers enumerated in clause (a);

(c) The manufacturing, bleaching, dyeing, or other finishing of pile fabrics (except carpets and rugs) from any fiber or yarn;

(d) The processing of any textile fabric, included in this definition of this industry, into any of the following products: bags; bandages and surgical gauze; bath mats and related articles; bedspreads; blankets; diapers; dish-

cloths, scrubbing cloths and wash-cloths; sheets and pillow cases; table-cloths, lunch-cloths and napkins; towels; and window-curtains;

(e) The manufacturing or finishing of braid, net or lace from any fiber or yarn;

(f) The manufacturing of cordage, rope or twine from any fiber or yarn;

(g) The manufacturing or processing of yarn or thread by systems other than the woolen system from mixtures of wool or animal fiber (other than silk) with any of the fibers designated in clause (a), containing not more than 45 percent by weight of wool or animal fiber (other than silk);

(h) The manufacturing, bleaching, dyeing, printing or other finishing of wooven fabrics (other than carpets and rugs) from mixtur s of wool or animal fiber (other than silk) containing not more than 25 percent by weight of wool or animal fiber (other than silk), with any of the fibers designated in clause (a), with a margin of tolerance of 2 percent to meet the exigencies of manufacture.

The industries grouped under the jurisdiction of the Textile Committee are so inter-related that a broad definition is necessary to avoid unfair treatment being given to establishments utilizing various mixtures of fibers or performing more than one process in the completion of a finished textile fabric. Thus, all spinning of yarn or thread and all weaving and finishing of fabrics containing cotton, silk, flax, jute, rayon or other synthetic fibers, or containing mixtures of such fibers with the percentage of wool or animal fibre (other than silk) specified, are subject to the jurisdiction of the Textile Committee. All employees in the textile industry who are engaged in com-

merce or in the production of goods for commerce, excepting employees exempted under the provisions of Section 13(a) and Section 14 of the Act are included within this jurisdiction.

Analysis of the Evidence

A. *Structure of the Industry*

The textile industry is a complex aggregation of processes and techniques adapted to the preparation and spinning of many types of fiber and to the weaving or other fashioning of fibers into products available directly for consumption or for use as material by other industries. The Bureau of the Census divides the textile-mill field into 12 related industry groups and further subdivides these groups into 42 subgroups of related establishments.[1]

Although the jurisdiction of the Textile Committee, as set forth above, does not cover the entire field of textile-mill products, as defined by the Census, the jurisdiction of the Committee is comprehensive in scope. A reasonably accurate picture of the jurisdiction of the Committee is shown in Table I.

[1] U. S. Bureau of Labor Statistics, Report on the Definition of "Textile Industry" for Industry Committee No. 1, pp. 3ff.

TABLE I.

Jurisdiction of Industry Committee No. 1.[1]

General Census Statistics, 1935.

Group of Products	Number of Establishments	Number of Workers [2]	Value added by Manufacture (in thousands of dollars)	Value of all Products [3] (in thousands of dollars)
Total	3,288	640,678	755,112	1,863,581
Cordage, twine, jute and linen goods	148	20,177	34,349	68,858
Cotton manufactures	1,223	394,404	404,247	1,030,768 [4]
Dyeing & finishing of cotton, rayon & silk	523	78,585	121,594	223,662
Lace goods	56	8,716	16,588	27,528
Rayon manufactures	447	73,261	91,654	204,505
Silk manufactures	658	58,089	69,302	149,721
Waste (except wool)[5]	233	7,446	17,378	49,539

[1] Data relate to establishments primarily engaged in the manufacture of the products included within the definition of "textile industry." The net excess value of products outside the definition which were made in these establishments amounted to $119,890,000; on the other hand, products to the value of about $53,500,000 included within the definition were made in establishments other than those listed above.

[2] Including salaried workers, but not salaried officers.

[3] Including value of contract work and value of products outside the definition of "textile industry," made in the establishments listed.

[4] Excluding $20,179,000 of cordage, rope and twine, listed by the Census under cotton manufactures and under the cordage and twine industry.

[5] Excluding wool products of the industry. Number of establishments, number of workers, value added and value of all products estimated at 73 percent of the industry.

The primary reasons for a definition that places these many branches of the textile industry under the jurisdiction of a single committee are: (1) the interrelation of structure that exists among them; (2) the competitive nature of their products.

Structurally, the industry branches that compose the jurisdiction of the Textile Committee exhibit a maze of interrelationships. Textile finishing operations, for example, may be carried on in independent plants or in the finishing departments of integrated mills. Cotton yarn spinning is conducted in specialized yarn mills, the product being sold on the open market; yarn is also spun in integrated plants for the use, in the main, of the weaving departments of these plants. Moreover, cotton spinning is found also in cordage and twine mills, and in a number of other textile industries. It is possible to apply either cotton or silk looms to the manufacture of rayon. There has been a tendency for specialized rayon weave sheds to develop in cotton mills. Some mills in what is traditionally considered the "silk industry" work exclusively on rayon; other silk mills employ a portion of their looms in the weaving of rayon. Silk and rayon are used in varying proportions to produce mixed-fiber fabrics; rayon and cotton are similarly utilized.

The textile divisions over which Industry Committee No. 1 has jurisdiction are also linked together through the medium of market competition. To some extent osnaburgs compete with burlap bagging made of jute. Dress goods made of cotton and rayon are sharply competitive. Cotton handkerchief cloth competes with linen. Silk and rayon compete fiercely with each other for the consumer's dollar. Of course not all textile products compete directly with each other. Probably there is little direct competition between print cloth and lace, or between rayon dress goods and cotton osnaburgs. But the industries grouped under

the jurisdiction of the Textile Committee are so related, in terms both of structure and of market competition, to require consideration by a single committee for the establishment of satisfactory minimum wage standards.[1]

These interrelationships provided the main reason for the belief of the Committee that sound policy dictated the establishment of a basic minimum wage for the industry as a whole. Any other policy would have given rise to perplexing managerial and enforcement problems because of the interlocking structure of the industry.[2]

This decision, in part, explains why the bulk of the testimony before the Committee related to the cotton textile industry. That division of the textile industry that would feel more sharply than any other major branch the impact of *any* basic minimum wage recommended by the Committee would obviously come in for major attention. Wage levels in the cotton branch are slightly lower than wage levels in most other divisions of the industry subject to the jurisdiction of the Committee. Moreover, as Table I indicates, the cotton branch is by far the most important of the industry branches covered by the jurisdiction of the Committee, both in terms of the number of wage earners employed and the value of the product of the industry. The analysis that follows of the evidence presented to the Committee, therefore, is largely concerned with cotton manufacturing.

[1] Ibid., pp. 8ff.

[2] Several proposals placed before the Committee, if adopted, would have necessitated classification of the industry by branches. It was suggested, for example, that a 40-cent rate be recommended for the surgical dressings branch (Johnson and Johnson, Hearings, December 15, 1938, II, p. 158), for textile dyeing and finishing (Dyers and Printers Employers' Association, Hearings, II, p. 197), and for textile engraving (Allied Workers of the Textile Engraving Industry, Hearings, December 16, 1938, III, p. 359); the representative of one association urged a 35-to 40-cent rate for textile finishing (National Textile Processors Guild, Hearings, II, pp. 184, 186). Since these rates differed from the general rate finally recommended by the Committee, industry-branch classification would have been necessary had these suggestions been adopted.

B. *Economic Conditions*

A large amount of information on the effect of various minima on costs and prices in the cotton textile industry was given to the Committee. Later in this report an analysis of this data is made with major attention centered on the effect of the recommended minimum. In addition, the Committee was influenced in making its minimum wage decision by other information relating to the general economic conditions of the textile industry. The information summarized in this section has influenced the Committee to adopt a cautious approach to the problem of minimum wage recommendation. The Committee has given serious attention to representatives of important sections of the industry who were of the opinion that caution should be exercised in raising the minimum above the statutory rate at the present time. [1]

(a) *Textiles a Low Wage Industry.* It is a fact, as evidence before the Committee indicated, that historically the wage structure of the textile industry, and especially of its cotton branch, has been below that of many other important manufacturing industries.[2] This condition has persisted for a very long time. It is one of the hard facts with which this Committee had to deal. Almost three-fifths (59.4 percent) of the workers in the cotton branch of the industry received less than 40 cents per hour in August, 1938.[3] This condition in itself casts doubt upon the wisdom of attempting to achieve *in this industry* the 40-cent minimum, which is one of the objectives of the Fair Labor Standards Act, at a single step.

At the same time, the Committee is in agreement with the statement that "the cotton-goods industry has given

[1] Cotton Textile Institute and associated textile associations, Brief, p. 66.
[2] Ibid. p. 62.
[3] U. S. Bureau of Labor Statistics, Bulletin No. 663, p. 74.

substanial evidence of its capacity to assimilate rising wages without increased labor-cost. The essential problem is one of the rate at which adjustments are made—a problem that arises out of the fact that a wage rate increase at the moment that it is made usually involves an increase of labor costs, while output per man-hour rises gradually." [1] The achievement of the 40-cent minimum in several steps would permit the industry to make a series of reasonably small readjustments in its wage structure, rather than one relatively large readjustment.

(b) *Mill Margins and Profits.* A cautious approach to the realization of the full wage objectives of the Act also seemed wise in view of the testimony relating to the present weakness of the market for cotton products.[2] This market weakness is reflected in relatively low prices and narrow mill margins. Information given to the Committee showed that mill margins [3] on important cloth constructions had fallen decisively from the spring of 1937 to September, 1938, the latest month for which detailed data were presented.[4] Testimony before Subcommittee D in March, 1939, indicated that little if any improvement in mill margins had taken place since the previous fall. While a mill margin should not be confused with a profit margin, over short periods of time a declining margin means reduced profits or possible losses, if operating costs do not change proportionately.

The only direct quantitative data on profits presented to the Committee were obtained from information relating

[1] Ibid. p. 54.

[2] Mr. Earl Stall, Subcommittee D, Hearings, p. 73; Mr. John A. Low, ibid., p. 91; American Cotton Manufacturers Association, Brief, ibid., pp. 46-47; Mr. C. A. Cannon, ibid., p. 13; Cotton Textile Institute, Brief, pp. 47-48.

[3] The mill margin is the difference between the selling price of a given cloth construction and the cost of the raw cotton required for its manufacture.

[4] U. S. Bureau of Labor Statistics, Bulletin No. 663, chap. 5.

to cotton manufacturing assembled by the Federal Trade Commission for six-month periods from January, 1933, to June, 1936.[5] From this data it is clear that although the industry, as represented by the companies reporting to the Commission, lost money during certain periods each branch of the industry realized profits for the entire 3½ years for which returns were made. The average annual rates of return on "average total textile investment" over the whole period were 2.7 percent for integrated (spinning and weaving) companies, 2.6 percent for spinning companies, and 2.8 percent for weaving companies. The significance of these rates may be questioned on the ground that the industry is consistently burdened with a large amount of idle equipment that is included in the investment base to which the rates apply. From an accounting point of view, this surplus equipment as a charge against the industry is justifiable only so long as its use in production can be anticipated in the near future.

Perhaps a more revealing picture of the profitability of the industry may be derived from a study of net profits on sales. In each except two of the six-month periods from January, 1933, to June, 1936, 70 percent or more of the sales of the reporting integrated mills were made at a profit.[1] Data relative to net profits on sales for all types of mills show that, except for the last half of 1934 and the first half of 1935, the proportion of all cotton textile companies showing a net profit on sales varied from 60 percent to 82 percent of the reporting companies. In most of the six-month periods, "more than half such companies realized net profits on sales in excess of 5 percent, and the more efficient or lowest cost companies showed profits ranging from 10 percent to more than 30 percent." [2]

[5] Ibid., chap. 4.

[1] During July, 1934, to December, 1934, the period of the general strike, 40 percent of the sales of the reporting companies were made at a profit; during the poor first half of 1935, only 26 percent of the sales were made at a profit.

[2] U. S. Bureau of Labor Statistics, Bulletin No. 663, p. 32.

As indicated primarily by the figures cited, it seems clear that the cotton textile industry as a whole is capable of realizing net profits over periods long enough to permit the averaging of the results of good years and bad. It seems apparent also that profits in recent years have not been large, and that year-to-year fluctuations have been considerable. A burden of surplus equipment continues to affect the earning capacity of the industry as a whole.

(c) *Recent Price Fluctuations.* One factor that impressed the Committee grew out of evidence relating to the fact that the prices of the products of the industry have fluctuated widely in the recent past. One witness stated, for example, that the composite price of the material used in bag manufacture was more than 7 cents per yard during the early months of 1937 and 3.6 cents on February 25, 1939.[1] A converter testified that the price to dress manufacturers of 80-square print cloth reached 15 cents during part of 1937 and stood at 10 cents at the time of his testimony.[2]

Plainly the industry is subject to wide and rapid changes in the prices of its products, fluctuations induced by changes in raw material prices and other cost factors, by changes in the underlying economic situation, by shifts in consumer preferences, and by alterations in the capacity of the industry to produce. The adjustments that a minimum wage order would necessitate may be set against the adjustments that the industry must constantly make as the factors mentioned above change. The fact that mill margins are narrow today may cease to be a fact a month or two hence, so rapid at times are alternations in the prospects of the industry.

(d) *Introduction of Third Shift.* The fear was expressed that if minimum wages were set "too high" mills

[1] Mr. H. P. Claussen, Subcommittee D, Hearings, p. 4.
[2] Mr. Donald B. Tansill, ibid., p. 11.

would attempt to lower unit costs by increasing their running time, thus adding to the effective capacity of the industry at the expense, perhaps, of the price structure of the industry.[1] Since the cotton-textile industry for practical purposes is now operating on the basis of two shifts of 40 hours each, a general extension of running time would involve the adoption of the third shift. Information before the Committee indicated that the question of "excess capacity" is largely a question of the future of the third shift.[2] It appears certain that the possible reduction in cost consequent upon the general adoption of the third shift "is so small that it contributes almost nothing to that 30-to-50 percent increase of demand which is necessary to warrant such additions to effective capacity as would follow from the wide-spread use of three-shift operation." [3]

It was also contended before the Committee that if production costs were increased to too high a point the rate of technological change in the industry would be greatly accelerated to the detriment of employment.[4] This again is a claim the validity of which is difficult to judge in terms of the various minima which this Committee had the power to recommend. It is represented, however, one factor in the cautious approach to the problem adopted by the Committee.

(e) *Foreign Trade.* The United States exceeds any other country in the production of cotton textiles, and the greater part of the huge domestic output is consumed in the home market. Measurable quantities of cotton products are sold abroad, however. Exports of both cotton yarns and countable cotton cloths greatly exceed imports.[5]

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[1] Cotton Textile Institute, Brief, p. 46.
[2] U. S. Bureau of Labor Statistics, Bulletin No. 663, p. 28.
[3] Ibid., p. 30.
[4] Mr. C. T. Murchison, Hearings, I, pp. 85ff; Cotton Textile Institute Brief, pp. 51-61.
[5] U. S. Bureau of Labor Statistics, Bulletin No. 663, chap. 7.

Since 1922, United States exports of cotton yarns have been from two to 15 times as large as imports. In 1937, exports were four times as great as imports in terms of quantity, and about twice as great in terms of value. Exports of countable cotton cloth since 1923 have been from two to seven times as large as imports. In 1937, exports were about double imports in terms of both quantity and value.

Prior to 1934 imports of cloth consisted in the main of fine fabrics and specialties, most of which were supplied by the United Kingdom and Switzerland. Beginning late in 1934, however, the character of imports changed, becoming more competitive with staple American production as a result of increasing imports from Japan.

In the face of the imposition of increased duties on certain cloth constructions on May 21, 1936, Japanese imports declined for a short period, only to increase rapidly with the rise in the price of cotton cloth during the second half of 1936. United States producers thereupon entered into an agreement with Japanese exporters providing for the limitation of exports to the United States to 255,000,000 square yards of cloth during the two-year period 1937 and 1938. In 1937 the quota of 180,000,000 square yards was not reached, and apparently Japanese exports to this country during 1938 were considerably below the 1937 level.

In recent years United States exports of countable cotton cloths have met increasing resistance because of (1) the rise of textile production in some countries which formerly provided a market for appreciable quantities, and (2) competition from low-cost producing countries, particularly Japan.

One element of uncertainty in the current foreign trade situation of the textile industries relates to the effect of tariff concessions granted in a number of reciprocal trade agreements, notably in that with the United Kingdom.[1]

C. *Effect of the Recommended Minimum on Employment*

The Committee received much evidence relating to the effect of various minima in the cotton textile industry upon labor costs, manufacturing costs, and selling prices to consumers. Obviously, this evidence was of basic importance in estimating the probable effect upon employment of minimum wage rates within the power of this Committee to recommend. No such detailed information was required for other branches of the textile industry, besides cotton manufacturing. Once the Committee came to the conclusion that one minimum should be recommended for all branches under its jurisdiction, it needed to investigate in detail only that branch of the industry in which any minimum from 25 cents to 40 cents would have the most marked effect.[2]

(a) *Effect on Wage Bill.* The Committee believes that the establishment of a minimum wage of 32.5 cents an hour will increase the wage bill of the cotton textile branch as a whole by 4 or 5 percent and that the wage bill of the dominant southern section will be increased from 6 to 9 per cent by this same minimum. These increases will not take place all at once, because they include not only the increase necessary to raise the wages of workers now re-

[1] Cotton Textile Institute, Brief, pp. 51-54.

[2] The existing level of average hourly earnings is generally higher in other branches within the Committee's jurisdiction than in cotton manufacturing. (See, for example, Monthly Labor Review, January, 1939, p. 237.) In the minor branches of rayon and silk commission throwing, however, average hourly earnings were asserted to be slightly lower than in the cotton textile branch. (See Hearings, I, p. 56.)

ceiving less than 32.5 cents, but also the estimated increases for workers already earning more than the minimum. The Committee believes that the establishment of a minimum will cause some increases to workers earning more than this amount because of the pressure to retain customary occupational differentials to some extent. Increases in wages above the minimum may be expected to occur gradually, however, depending, in part, on the financial position of the various mills in the industry. In arriving at its estimates of the effect of a 32½ cent minimum, the Committee took account of the methods used and the results presented by the Economic Section of the Wage and Hour Division and by representatives of cotton textile workers and employers.

The Economic Section estimated that the wage bill of the entire cotton branch would be increased by 4.0 per cent and that the wage bill of the southern cotton mills would be increased by 6.25 per cent. These estimates included an allowance for wage increases above the minimum, amounting in the north to 8.1 per cent as much as the cost of increases up to the minimum and in the south to 14.4 per cent of the cost of increases up to the minimum. The two ratios were obtained by a study of cotton textile wages during the year after the introduction of the N. R. A. code for this industry.[1]

On the basis of the method of estimating the effect of minima on the wage bill of the industry adopted by certain representatives of the workers, a 32½ cent rate would result in an increase in the wage bill of the entire cotton manufacturing industry of 3.8 per cent. By this

[1] Memorandum of Economic Section, Wage and Hour Division, The Possible Effect of Different Minima (25 cents to 40 cents per hour) in the Cotton Textile Industry on Labor Costs, Manufacturing Costs and Prices, February 23, 1938, p. 6.

method, the average hourly wage of 38.35 cents being paid in August, 1938, would increase to 39.8 cents.[1]

Representatives of the employers (Cotton Textile Institute) assumed that the average wage of all employees would be 23 per cent above the minimum in the north and 20 per cent above the minimum in the south; these being the percentage relationships which prevailed during the N. R. A. code.[2] On this assumption, a 32½ cent minimum would raise the average for the industry to 40 cents an hour, which would represent an increase in the wage bill of the entire branch of 4.2 per cent. In the dominant southern division, the method used by the Institute would indicate an increase in the average wage of 6.6 per cent., the average rising from 36.6 cents as of August, 1938, to 39 cents an hour.

The Committee is impressed by the close agreement of the results obtained by suing each of the three methods adopted by witnesses presenting estimates of the effect of minimum rates on the wage bill. Thus, for the cotton branch as a whole, these methods all lead to the conclusion that the average increase in the wage bill would be close to 4 percent. For the southern sector, the Institute method suggests an increase of 6.6 per cent as against the estimate of 6.25 as presented by the Economic Section.

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[1] See Brief of Textile Workers Organizing Committee, Appendix "A". As to the north, it was estimated that "Raising the wages of this group up to the minimum of 32½ cents would increase the average wage by 0.4 cents." The northern average would thus become 45 cents. As to the south, it was assumed that a spread of 5.8 cents would exist between the minimum and the average. This would imply a southern average of 38.3 cents at a minimum of 32½ cents. The weighted average of the northern and southern figures would be 39.8 cents (See U. S. Bureau of Labor Statistics, Bulletin No. 663, Table 43, page 71). Since actual estimates of the Textile Workers Organizing Committee and the American Federation of Labor were confined to the effect of a 40 cent minimum; the calculation in the text represents an adaptation of the method used to a 32½ cent minimum. Both groups agreed that a 40 cent minimum would increase the wage bill of the cotton branch by 19 or 20 per cent.

[2] Cotton Textile Institute, Brief, p. 35.

The Committee's outside estimate is based on the possibility that the southern average may be pushed up to 40 cents an hour. This would involve an increase of 9.3 per cent in the wage bill for the whole period since August, 1938, or an increase of less than 9 per cent above the present wage bill, based on a 25 cent minimum.

(b) *Effect on Manufacturing Costs.* Labor costs represent only one portion of the total costs of manufacturing. The effect of a given minimum wage on manufacturing costs, therefore, will be smaller than the corresponding effect on labor costs alone. The effect of a minimum wage on manufacturing costs will depend upon two factors: (1) the effect of the minimum on the wage bill; (2) the ratio of labor cost to total manufacturing costs.

Information placed before the Committee indicated that the ratio of labor costs to total manufacturing costs varies considerably within the cotton textile industry.[1] For the period January—June, 1936, the Federal Trade Commission found that labor costs in integrated mills ranged from 23.0 per cent to 40.8 per cent of total manufacturing costs, depending upon the type of product. The average was 29.2 percent.

In the information presented to the Committee, the ratio of labor costs to total manufacturing costs during January—June 1936, was adjusted on the basis of changes in wages and raw cotton prices that had occurred between this period and the third quarter of 1938.[2] On the basis of this adjustment, labor costs were estimated to average about 36 per cent of total manufacturing costs. In the opinion of the Committee, this estimate has approximate validity at the present time. The ratio of labor costs to total manu-

[1] Economic Section, Wage and Hour Division, Memorandum, cited, pp. 9ff, Cotton Textile Institute, Brief, p. 41.
[2] Economic Section, Memorandum, cited, p. 10.

facturing costs will tend to fall below the average in those mills making coarse cotton products, and to rise above the average in mills producing fine goods.

As was indicated earlier, a 32½ cent minimum wage bill will produce an increase in the wage bill of the cotton textile industry as a whole of about 4.0 per cent. The recommended minimum would tend, therefore, to raise manufacturing costs by approximately 1.44 per cent (.04 x .36). If labor costs in the southern branch of the industry increase by 6.25 per cent, the increase in manufacturing costs would be in the neighborhood of 2.25 per cent. A 9.3 per cent increase in labor costs in the south, based on the outside assumption of a 40 cent average of hourly earnings, would increase manufacturing costs by 3.34 per cent on the average.

The above figures, of course, rolate to the effect of the recommended minimum on manufacturing costs for the industry as a whole, and on the entire southern division of the industry. Manufacturing costs in some mills will be affected much more decisively than in the average mill, while costs in other mills will be affected less decisively. Although recognizing these variations, the Committee is of the opinion that increases in manufacturing costs of this magnitude could be borne successfully by the cotton textile branch and by other branches of the textile industry without causing any substantial curtailment of employment in the industry.

(c) *Effect on Prices and Consumption.* Probably no portion of the testimony before the Committee had a more direct bearing upon the problem of employment curtailment than that relating to the effect of various minima upon selling prices to consumers. Part of the evidence on this subject, of course, was based upon the labor and manufacturing cost analysis previously summarized in this re-

port; in addition, Subcommittee D heard testimony on this subject from witnesses representing manufacturers of cotton cloth, manufacturers of various products of cotton cloth, and dealers in textile products.

The Committee is convinced, on the basis of the evidence, that price increases to consumers resulting from the introduction of a 32½ cent minimum wage in the textile industry will be too small to affect net employment appreciably. It is possible, indeed, that the very moderate increase in cost occasioned by a 32½ cent minimum can be absorbed by the industry or by one or more of its marketing agencies. Small and nonessential changes in the manufacture of many textile products may obviate the necessity for price advances to consumers. Over a period of time, labor cost increases may be counterbalanced by increases in labor efficiency.

But even if the full increase in costs produced by a 32½ cent minimum rate is passed on to consumers, the advance in prices should be relatively slight. A discussion of the extent of such increases is somewhat complicated by the existence of rigid retail price lines for many textile products, as indicated below.

The Economic Section of the Wage and Hour Division estimated that increased labor costs from a 32½ cent minimum would amount to 4.0 per cent for the cotton textile industry as a whole.[1] Earlier in this report it was shown that an average increase in labor costs of about 6.25 per cent could be anticipated in the south. So as to avoid any possibility of minimizing the effect of the recommended minimum on labor costs, the figure for the south may be taken to represent the increase for the industry as a whole.

[1] Memorandum, cited, p. 11.

With a 6.25 per cent increase in labor costs of grey goods, the retail price of shirts should increase by about 2.75 percent if the entire increase is passed on to the consumer.[1] This calculation allows for the maintenance of percentage profit margins for mill selling agencies, converters, wholesale print cloth dealers, wholesale shirt dealers, and retail shirt dealers. On the outside assumption that mill labor costs will increase by as much as 9.3 per cent, and that the full increase is passed on to the consumer, the increase in the retail price shirts would be 4.19 per cent. Although this calculation relates to only one product, it indicates the moderate nature of any increases in retail prices that may result from the recommended minimum.

A similarly moderate result is obtained if one assumes that the retail prices of cotton products rise sufficiently to cover the increased cost of manufacturing grey goods on the part of mills which employ more than nine-tenths of the workers in the entire cotton branch. Only 5.6 percent of all cotton textile workers and only 7.0 percent of the Southern cotton textile workers were employed in mills with plant averages of less than 30 cents an hour in August, 1938.[1] The remaining mills would be required to increase their labor expenses by 10 percent or less, as a result of a 32.5-cent minimum.[2] A 1.4 percent rise in the retail price of shirts would fully cover this 10 percent rise in the wage bill of grey-goods mills, even if no part of the increased costs were absorbed by the mills themselves or by converters, shirt manufacturers or shirt dealers. The Committee does not concede that its recommendation will make necessary even this moderate increase in the retail prices

[1] The explanation of this calculation is given in the Memorandum of the Economic Section, Wage and Hour Division, cited, pp. 21-23. In the calculation in the Memorandum, 20.0 per cent increase in labor costs was assumed instead of the indicated 6.25 to 9.0 per cent increase occasioned by the 32½ cent minimum rate.

[1] See Table II, p. 35.
[2] See p. 41.

of cotton products. It is of the opinion, however, that an increase in retail prices of less than 5 percent will not check consumption sufficiently to cause any substantial curtailment of employment in the Textile Industry.

This general conclusion of the Committee was confirmed by direct testimony on the effect of various minimum rates upon prices, as given by representatives of the Industry before Subcommittee D. A brief summary of this important testimony follows:

1. A witness engaged in finishing and converting operations testified concerning the effect of increased prices upon a popular $1.00 house dress made from 80-square print cloth.[3] The witness stated that this cloth was being sold to dress manufacturers at about 10 cents per yard, and that the price could increase to 11 or 11½ cents—that is, by 10.0 or 15.0 percent—without affecting the style or construction of the cloth or the retail price of the garment. At 12 or 13 cents per yard, the style of the garment would be altered but the retail price would remain unchanged. The witness also stated that the cost of grey goods could go to 8 or 8½ cents per yard without affecting consumer prices. The current price of 80-square print cloth is approximately 6 cents per yard.

2. A Southern overall manufacturer estimated the effect of several minimum wage rates on the wholesale price per dozen overalls of a particular type.[1] The estimates took account of the increased cost of denim and the increased cost of overall manufacture. The results as given to the Subcommittee were as follows:

[3] Mr. Donald B. Tansill, Subcommittee D. Hearings, March 1, 1939, pp. 11-12.

[1] Mr. J. V. Fox, ibid., pp. 39-43.

Minumum Rate	Percentage increase in wholesale price per dozen of specified type of overall [1]
30.0 cents	None
32.5 cents	3.90%
35.0 cents	6.49%
40.0 cents	11.69%

[1] Mr. J. V. Fox, Subcommittee D, Hearings, March 1, 1939, p. 41.

This overall at the time of the testimony was being sold at retail at both 89 cents and 98 cents. The witness stated that the 32½ cent minimum would not force the retail price above 98 cents.

3. The marchandising manager of a large retail chain testified as to the increased wholesale price per dozen, at various minima, of two items (a shirt and men's short) sold by the chain.[2] The increased costs as thus estimated included increases at all stages of manufacture, from grey goods through shirts or shorts. These increases as presented at the hearing were as follows:

Minimum Rate	Percentage increase in wholesale price per dozen of specified shirt [1]	Percentage increase in wholesale price per dozen of specified men's short [2]
30 cents	8.33%	2.50%
35 cents	16.66%	6.50%
40 cents	25.00%	14.50%

[1] Mr. T. J. Burns, Subcommittee D, Hearings, pp. 21-22.
[2] Ibid., pp. 25-26.

The shirt on which the above calculation is based was being sold for 69 cents at retail. The witness stated that a 30-cent minimum would probably result in a retail price of 79 cents, this being the next popular price line. Since the witness stated that a 35 cent minimum would not result in raising the retail price above 79 cents, a 32½ cent rate clearly would not result in a larger increase than that

[2] Mr. T. J. Burns, ibid., pp. 19-29.

occasioned by the mandatory rate of 30 cents effective in October of this year.[4]

The men's short was being retailed at 25 cents. On the basis of a 30-cent minimum, according to the witness, there would be no advance in the retail price; at a 35-cent minimum the 25-cent retail price might be retained, but the specifications for the garment lowered. Plainly the recommended minimum of 32½ cents would not disturb the retail price of this item.

4. A cotton bag manufacturer presented estimates of the increased cost per thousand bags of various constructions that would be produced by increases in cloth prices ranging from 1/16-cent to one cent per yard, and from 1/8-cent to three cents per pound.[1] The witness stated that "it is the opinion of our people that none of the increases *in the ranges studied* would be likely to affect in themselves and *solely because of such increases*, the volume of cotton bags used, or, because of such increases, cause any shift to paper or other containers, such as burlap." [2]

The whole problem of the effect of increased labor costs (or of other costs) upon the prices of consumers' goods is complicated by the existence, as revealed in the testimony before Subcommittee D, of conventional retail price lines for various products. Retail prices tend to change by big jumps rather than by small increments. In the case of the shirt described by one witness,[3] for ex-

[4] The witness testified that a 30-cent minimum, and a retail price of 79 cents, would probably make possible a better designed and styled shirt; a 35-cent minimum, with a 79-cent retail price, would probably necessitate taking something out of the shirt.

[1] Mr. H. P. Claussen, Brief, Subcommittee D.

[2] Italics his.

[3] See pp. 30-31.

ample, it was testified that a 30-cent minimum would increase the wholesale price by 8.33 percent, and that the retail price would jump from 69 cent to 79 cents, an increase of 14.5 percent. The 79-cent price would be maintained, however, if the minimum rose from 30 cents to 35 cents. The same witness testified that the price of a men's short, now retailing at 25 cents, would remain unchanged at a 35-cent minimum; a 40-cent minimum would be required to force the article to the next price, 29 cents.

The observance of these customary price lines in retail selling apparently acts sometimes to accelerate and sometimes to retard the shifting of increased costs to the ultimate consumer. In the case of the $1.00 house dress upon which the Subcommittee heard testimony,[1] a very considerable absorption of increased cost would occur before an advance in the retail price would be considered seriously. This is true also of the overall discussed above.[2] Manipulation of style and construction, perhaps of relatively small importance in terms of the intrinsic worth of the article, may forstall the necessity for increases in retail prices in response to cost increases for many products.

It seems clear, on the basis of the testimony, that there is not a straight road leading from cost increases to retail price increases. What happens in any particular instance depends not only upon the magnitude of the cost increases, but also upon the customary practices of the industry and its marketing agencies.

The Committee finds that such retail price increases as may result from the adoption of its recommended minimum of 32½ cents per hour would be too small to affect significantly the quantity of textile products taken by consumers. It is clear, therefore, that a 32½-cent minimum rate will not substantially curtail employment in the industry.

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[1] See pp. 29-30.
[2] See p. 30.

D. *Effect of the Recommended Minimum on Competitive Conditions*

(a) *Variations in Wage Level by Mill.* In recommending a minimum wage rate of 32½ cents at this time, the Committee has taken account of economic and competitive conditions in the textile industry and particularly in the cotton textile branch of the industry. The general economic conditions which have influenced the Committee to proceed cautiously are summarized in an earlier section of this report. In addition, the Committee has given serious attention to the effect of a 32½-cent minimum on competitive conditions within the cotton-manufacturing branch of the industry.

It is clear that no wage order that this Committee might recommend would affect all establishments in the industry to the same extent. Inevitably, the impact of a wage order will be greater on some establishments than on others. This follows from the fact that the wage structures of the establishments in the industry differ considerably. Those establishments with relatively few workers below a given minimum will obviously be less affected than those establishments with many workers below the given rate.

A given minimum wage rate, therefore, may produce a relatively large increase in the wage bills of plants at the lower end of the scale of wage structures prevailing in the industry. However, the impact of a given rate on the industry as a whole will be small if the low-wage plants represent a relatively small proportion of the total number of plants.

The impact of any minimum wage that this Committee might recommend would be felt most keenly by the relatively small sector of the industry operating on the basis of very low wage standards. The Committee had before it a classification of mills in the cotton goods industry according to average hourly earnings in August, 1938. This information is shown in Table II.

TABLE II.

Average Hourly Earnings in the Cotton Goods Industry August, 1938.

Average Hourly Earnings	Number of Establishments			Percentage of Employees		
	United States	North	South	United States	North	South
Less than 20.0 cents	6	..	6	0.4	...	0.5
20.0 — 24.9 cents	28	..	28	1.5	..	1.9
25.0 — 27.4 cents	28	..	28	1.9	..	2.4
27.5 — 29.9 cents	35	3	32	1.8	0.4	2.2
30.0 — 32.4 cents	69	..	69	5.9	..	7.6
32.5 — 34.9 cents	114	5	109	14.0	0.7	17.7
35.0 — 37.4 cents	147	10	137	18.4	2.6	22.7
37.5 — 39.9 cents	82	15	67	15.5	7.7	17.7
40.0 — 44.9 cents	155	66	89	31.2	55.0	24.7
45.0 — 49.9 cents	55	41	14	7.0	23.4	2.4
50.0 cents and over	65	60	5	2.4	10.2	0.2
				100.0	100.0	100.0
Total	784	200	584	319,294	69,109	250,185

Source: U. S. Bureau of Labor Statistics, Bulletin No. 663, Table 45, p. 74.

The fact should be stressed that this table has no relation to *minimum* wage rates. The classification is on the basis of *average* hourly earnings as of August, 1938. In that month there were, for example, six plants in the country reporting to the United States Bureau of Labor Statistics with average hourly earnings of less than 20.0 cents. Some workers in these plants earned more than 40 cents per hour; others as little as 12.5 cents. The average stood at less than 20.0 cents. In the group of plants (155 in number) with the relatively high average hourly earnings of from 40.0 cents to 44.9 cents, some workers earned less than 20.0 cents per hour, others more than 60.0 cents.

Only on the small group of very low-wage mills, as shown below, does the minimum recommended by the Committee produce a marked increase in costs. Although most of the low-wage establishments are located in the South, the Committee was impressed by the fact that such establishments are not characteristic of the southern branch of the industry. Many southern mills, indeed, have wage scales comparable to those in northern mills. In August, 1938, as Table II shows, more than one-sixth of the southern mills, employing more than one-quarter of the southern workers paid an average hourly wage to all their workers in excess of 40 cents.

Clearly, therefore, the wage scales in the southern and northern branches of the cotton manufacturing industry overlap to a very considerable extent. Nevertheless, the Committee recognized that the general level of hourly earnings was somewhat lower in the South than elsewhere. In August, 1938, average hourly earnings in cotton textiles in the United States came to 38.4 cents; the average in the South was 36.6 cents; in the North, 44.6 cents.[1]

In order to show the maximum effect of the recommended minimum, the discussion below is largely in terms

[1] U. S. Bureau of Labor Statistics, Bulletin No. 663, pp. 71-72.

of its effect on the southern division of the industry. The Committee feels that this is the most fruitful approach to the problem. This approach is also indicated by the fact that more than 70 percent of the cotton textile industry of the nation, measured in terms of both were earners and spindles in place, is located in the South. The data available to the Committee were broken down, for the most part, on a North-South basis.

(b) *The Problem of Estimating Effects of the Minimum on Different Mills.* The United States Bureau of Labor Statistics prepared detailed wage tables for the Committee which showed the percentages of cotton textile workers earning various amounts from under 12.6 cents per hour to 97.5 cents and over per hour in groups of mills classified on the basis of average hourly earnings in August, 1938.[1] It was possible, therefore, to calculate the effect of various minima on labor costs for each of these groups of mills. For example, it was possible to show the average effect of a 32½ cent minimum on the group of mills with average hourly earnings in August, 1938, of from 20.0 cents to 24.9 cents, on the group with average hourly earnings of from 25.0 cents to 27.4 cents, and so on. This information is clearly vital to any estimate of the effect of the action taken by the Committee on competitive conditions within the industry.

The primary problem involved in measuring the effect of various minimum rates on wage bills for different groups of plants in the industry grows out of the fact that a minimum tends to result indirectly in some increase in wages above the minimum. The *direct* effect of various minima can be measured with considerable precision. In addition, a sound method must be devised to measure the *indirect* effects on wages of the establishment of a minimum wage.

[1] Ibid., Chap. 16.

The extent of the ultimate adjustments in wages above the minimum is in some measure problematical. The Brief submitted to the Committee by the Cotton Textile Institute stated that "it would be extremely difficult to state with complete assurance the effect of a new minimum upon the entire wage structure, because the problem, in our opinion, is not amenable to statistical determination but must be appraised in the light of the judgment and experience of the industry." [1] A witness testified that the problem was essentially one of judgment.[2] The memorandum on the effect of various minima on costs and prices prepared by the Economic Section of the Wage and Hour Division states that "no estimate of the effect of the establishment of a minimum wage rate on wage rates above that minimum can be made with accuracy or certainty." [3]

Although the information placed before this Committee on the matter of wage increases above the minimum must be interpreted cautiously, sufficient data were presented to warrant conclusions having basis in fact concerning the total impact on the wage bill of the minimum rate recommended by the Committee.

Both the Cotton Textile Institute and the Economic Section of the Wage and Hour Division presented calculations of the total effect of a 32½-cent minimum on the wage bills of southern cotton mills classified on the basis of average hourly earnings in August, 1938. In both cases, N. R. A. experience was utilized to estimate the influence of the minimum on wages above the minimum. N. R. A. experience was used differently by the two witnesses, however, and different results were obtained.

The Institute found that the ratio of *average hourly wages* to the N. R. A. code minima was 120 percent in the

[1] Cotton Textile Institute, Brief, p. 34.
[2] Mr. Earl Stall, Hearings, Subcommittee D, p. 69.
[3] Memorandum, cited, p. 5.

South, and 123 percent in the North. The Institute then assumed that a fixed minimum would require *all mills* with an average hourly wage of less than 20 percent above the minimum is the South and 23 percent above the minimum in the North to increase wages until these percentage relations between minimum and average rates had been achieved. It was assumed, in other words, that a 32½ cent minimum in the South would require all mills paying an average hourly wage of less than 39.0 cents—that is, paying an average of less than 20 percent above the minimum—to increase wages until this average had been reached. By this method, a 32½ cent minimum would result in a 39-cent average hourly wage in plants which previously had paid a 25-cent average and also in plants which previously had paid a 38-cent average.

The Committee considered this method to be an extremely interesting approach to the difficult problem of measuring the total impact of minimum rates on wage bills. This method, however, seems more appropriate for measuring the effect of minimum rates on the wage bill of the industry as a whole than on individual plants or groups of plants classified on the basis of average hourly earnings. The results of the use of the Institute method in measuring the impact of a 32½-cent minimum on the wage bill of the industry as a whole and on the dominant southern sector of the industry were given above.[1] These results corresponded very closely with the results of other estimates given to the Committee.

When applied to groups of plants, however, the Institute method appears to magnify the effect of the 32½-cent rate on the low-wage plants, and to understate its effect on relatively high-wage plants. The reason for this has already been noted; namely, the assumption that there is a

[1] See p. 24.

fixed percentage relation for all plants between minimum wage and average wage. As a matter of fact, it appears that for individual plants this percentage relationship varies considerably. A 32½-cent rate, for example, may result in a 35-cent average in one plant, a 36-cent average in another, or a 40-cent average in a third.

Another method of measuring the impact of minimum wage rates on wages above the minimum was presented by the Economic Section of the Wage and Hour Division.[1] It was assumed that the difference between the average hourly earnings in the cotton textile industry in July and August, 1933, reflected almost entirely the effect of the N. R. A. minima, while the difference between August, 1933, and August, 1934, measured almost entirely the granting of increases above the minima. The impact of the increase in wage rates above the minima was 13.1 percent as great as that resulting directly from the minima for the United States as a whole; it was 8.1 percent as great for the northern mills, and 14.4 percent as great for the southern mills.

By this method, the total impact of a minimum rate on a mill or group of mills would be measured by (1) the amount necessary to raise those workers getting less than the minimum wage up to that wage, and (2) an allowance of a certain percentage of this amount for wage increases above the minimum. An allowance of 14.4 percent of the direct increase is used in the calculation below to show the total effect of the recommended minimum on the wage bills of southern plants. The Committee holds no brief for this particular percentage. It is used here only for the purpose of providing a picture of the relative effect of the recommended minimum on different groups of southern mills. Although the actual increases may be somewhat

[1] Memorandum, cited, p. 5.

greater or smaller than those indicated, depending on a number of unpredictable factors, the Committee believes that the increases as shown below are sufficiently accurate to permit an informed judgment to be made on the effect of its recommendation upon competitive conditions within the industry.

(c) *Effect of Recommended Minimum on Wage Bills of Classified Southern Mills.* The question of whether the recommended minimum will appreciably affect competitive conditions within the industry can now be discussed. In the tabulation below the total effect of a 32½-cent minimum on the wage bills of southern integrated and spinning mills classified on the basis of average hourly earnings is shown.

Average hourly earnings per establishment August 1938	Percentage total increase in labor costs		Percentage of southern employees in each group, spinning and integrated mills combined
	Southern integrated mills	Southern spinning mills	
20.0 — 24.9 cents	29.79	29.42	2.4
25.0 — 29.9 cents	18.21	14.35	4.6
30.0 — 32.4 cents	9.72	7.87	7.6
32.5 — 34.9 cents	5.97	2.72	17.7
35.0 —37.4 cents	3.59	1.72	22.7
37.5 — 39.9 cents	2.02	1.35	17.7
40.0 — 42.4 cents	1.75	...	...
42.5 — 44.9 cents	.51	...	24.7
45.0 — 49.9 cents	.80	...	2.4

Source: Economic Section, Wage and Hour Division Memorandum, cited, pp. 7a, 7b.

As this tabulation indicates clearly, the total impact of the recommended minimum on the wage bills of plants in the southern sector of the cotton textile industry varies greatly. On the small group of integrated mills with average hourly earnings in August, 1938, of between 20.0

cents and 24.9 cents, the 32½-cent rate will increase wage bills by about 29.8 percent; on the numerous mills with average hourly wages of between 40.0 cents and 44.9 cents, the increase will range from 0.51 percent to 1.75 percent.

In the opinion of the Committee, it is highly significant to note that the effect of the 32½-cent minimum on wage bills is very moderate for those plants employing the vast majority of the southern workers. Only in the case of those establishments with average hourly earnings in August, 1938, of less than 30 cents will a 32½-cent minimum occasion an increase in labor costs of more than 10.0 percent. These establishments employ about 7.0 percent of the southern wage earners in cotton textiles. For establishments employing more than two-thirds of the southern workers, the recommended minimum will result in wage bill increases of less than 4.0 percent.

It is necessary to remember, moreover, that wages represent only one of the costs of doing business. It has already been pointed out, indeed, that labor costs constitute, on the average, about 36.0 percent of total manufacturing costs. Hence, the recommended minimum would tend to increase total manufacturing costs by slightly more than one-third of the wage bill increases, taking the cotton branch of the industry as a whole. This means that even the southern integrated mills with the low average hourly wage in August, 1938, of between 25.0 cents and 29.9 cents would experience a manufacturing cost increase of only about 6.0 percent, despite a wage bill increase of 18.2 percent. The manufacturing costs of mills employing 93.0 percent of the southern workers will be increased by 3.5 percent or less by the introduction of a 32½-cent minimum.

A number of considerations regarding the position of the small group of low-wage mills on which a 32½-cent rate does produce a relatively large increase in costs

should be stated. Some of these mills may be earning exceptional profits on the basis of low-wage standards. While low-wage mills often have low output per man-hour, this is not invariably the case. The Committee has before it the statement that "some low-wage mills achieve an average or better than average output and hence achieve extremely low labor costs."[1] Presumably the low-wage mills in this position can absorb successfully part or all of the increase in cost resulting from the recommended minimum.

Some mills may now be operating on a low-wage basis because of managerial inefficiency. These mills may be able to adjust themselves to the moderate minimum wage now recommended if their efficiency is brought up to current standards in the industry. Experience elsewhere indicates that the establishment of minimum wage standards provides an incentive to efficient management. Experience in the cotton branch of this industry suggests that differences in operating efficiency are by no means rigid over a period of time.[2] Not only is there a considerable range of unit costs in different mills at any one time, but the high-cost mills of today may be in the low-cost group of mills tomorrow. Increased efficiency of operations is thus another method by which the increases in wage bills resulting from the Committee's recommendation may be met.

The Committee feels that adjustments are open to the low-wage fringe of mills in the industry that will permit these mills to continue to function. It is clear to the Committee that no reasonably efficient enterprise in the textile industry need fear the result of the modest

[1] U. S. Bureau of Labor Statistics, Bulletin No. 663, p. 53.
[2] Ibid., p. 38.

wage standard recommended for the industry. In view of the moderate nature of the cost increases for the vast majority of Southern establishments, the Committee is convinced that the 32½-cent rate will not unduly affect competitive conditions within the industry.

E. *The Problem of Classification.*

The problem of classification remains to be discussed. Section 8 (c) of the Act reads, in part:

"The industry committee for any industry shall recommend such reasonable classifications within any industry as it determines to be necessary for the purpose of fixing for each classification within such industry the highest minimum wage rate (not in excess of 40 cents an hour) which (1) will not substantially curtail employment in such classification and (2) will not give a competitive advantage to any group in the industry, and shall recommend for each classification in the industry the highest minimum wage rate which the committee determines will not substantially curtail employment in such classification."

As indicated earlier, certain proposals made to the Committee, if adopted, would have necessitated branch classification.[1] The Committee believed, however, that the interrelated structure of the industry and the extent to which the different divisions of the industry were bound together through the medium of market competition were compelling reasons for the avoidance of classification by branches.[2]

There were two specific requests for area classification. A request for a differential below the basic mini-

[1] See p. 15 note.
[2] See pp. 12-15.

mum recommended by the Committee was made by representatives of the Committee of Southwest Textile Manufacturers for mills located in the States of Arkansas, Oklahoma, and Texas, and by the Mississippi Textile Manufacturers' Association for the mills in that State.

On regional classification Section 8 (c) of the Act states that

"no classification shall be made, and no minimum wage shall be fixed, solely on a regional basis, but the industry committee and the Administration shall consider among other relevant factors the following:

"(1) competitive conditions as affected by transportation, living, and production costs;

"(2) the wages established for work of like or comparable character by collective labor agreements negotiated between employers and employees by representatives of their own choosing; and

"(3) the wages paid for work of like or comparable character by employers who voluntarily maintain minimum wage standards in the industry."

The requests for differentials before the Committee were made on the basis of "competitive conditions as affected by transportation, living, and production costs", with most emphasis upon the transportation and living cost factors. The case presented by the Southwestern mill representatives was of a fairly elaborate character,[1] while the request from the Mississippi Textile Manu-

[1] Mr. Burt C. Blanton, Hearings, II, pp. 108-124; Mr. H. A. Burrows, Hearings, II, pp. 124-148; brief submitted to the Committee by Burt C. Blanton, entitled Commercial Survey of Southwestern Cotton Mills.

facturers' Association was contained in a letter to the Committee.[1]

There was no request for a differential for the Southeast, where the bulk of the cotton textile industry is located.

It was testified before the Committee that the Committee of Southwest Textile Manufacturers represented 24 mills employing about 7,500 wage earners.[2] These presumably were cotton mills.[3] In 1935, Mississippi had 11 establishments engaged in cotton manufacturing in which an average of 2,683 wage earners were employed during the year.[4] Taken together, therefore, the proportion of the industry located in these States is relatively small.[5]

The Southwestern group, in testimony before the Committee, requested a differential of 5 cents per hour below the minimum applicable to mills in the Southeast.[6] Subsequently, a motion was placed before the Committee to grant a differential of 2½ cents per hour below the general minimum to mills located in the Southwestern Freight Area, which includes the States of Texas, Oklahoma and Arkansas. This motion was defeated, only one affirmative vote being cast. The Committee determined that no other regional classification was warranted.

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[1] Letter in Appendix, Hearings, IV, pp. 428-431.
[2] Mr. Burt C. Blanton, Hearings, II, p. 146.
[3] In 1935, the Census of Manufacturers reported 23 cotton textile establishments in Texas and Arkansas, employing an average of 4,024 wage earners during the year. Data on the two cotton mills in Oklahoma were not reported separately.
[4] Census of Manufacturers, 1935.
[5] In 1935, Texas, Arkansas, and Mississippi contained 2.78 percent of the establishments and employed 1.75 percent of the wage earners in cotton textile industry. There were two establishments in Oklahoma for which the number of wage earners was not reported separately.
[6] Brief, Commercial Survey of Southwestern Cotton Mills, p. 36; Mr. H. A. Burrows, Hearings, II, p. 130.

The action of the Committee in rejecting the requested classification was based upon the belief that the data did not warrant such classification. The data considered by the Committee is analyzed below.

(a) *Transportation Costs.* In general, the Committee was of the opinion that in the textile industry there was no basis for a differential in the minimum wage to compensate for the alleged disadvantage of the Southwest in the matter of freight rates. The problem of freight rate advantage or disadvantage is difficult to approach on a regional basis. It is, in essence, a point to point problem. The mills in the Southwest undoubtedly enjoy transportation advantages to some markets over mills located in other parts of the country. To other markets the Southwest mills may operate under a shipping cost disadvantage as compared with mills situated elsewhere. If wage differentials were to be granted to equalize the transportation costs for all mills to all markets the task would be fantastic and impossible of achievement.

One Southwestern witness before the Committee stated that about 35 per cent of the output of his mill was sold within the State of Texas.[1] He testified that most of his remaining output was sold in the Middle West.[2] In Table III, all-rail rates per 100 pounds of finished cotton fabrics in the original piece from Atlanta, Georgia, and Dallas, Texas, to eight cities in Central and Western trunkline territories are shown. These 8 cities have been used in previous comparisons by the Interstate Commerce Commission as a fair sample of the leading points of destination for industrial textiles. The average

[1] Mr. H. A. Burrows, Hearings, II, p. 130.
[2] Ibid., p. 131. It is probable that the fabrics made by the Southwestern mills are used to a considerable extent for industrial purposes. See Economic Section, Wage and Hour Division, Memorandum, Competitive Conditions as Affected by Transportation Costs in the Cotton Textile Industry, Feb. 21, 1939, p. 14.

all-rail rates to the eight Central industrial cities were $1.13 and $1.16 per 100 pounds from Atlanta and Dallas respectively, after June 8, 1937. This is a difference of only 13 cents per hundred pounds, or 12 per cent, between Atlanta and Dallas, despite the fact that Dallas is 19 per cent farther from the average market than Atlanta. This difference amounts to only 0.15 cents per pound of cloth.[3]

[3] On the basis of 88 pounds of cloth for each 100 pounds of gross weight as packed for shipment.

Table III. *All-Rail Rate Relation, South and Southwest to Central and Western Trunkline Territories.*

To:	Distance		Atlanta		Dallas	
			Prior to	After	Prior to	After
	From Atlanta Miles	From Dallas Miles	June 8, 1937 Cents per 100 lbs.	June 8, 1937 Cents per 100 lbs.	June 8, 1937 Cents per 100 lbs.	June 8, 1937 Cents per 100 lbs.
St. Louis	603	656	75	97	83.5	97
Chicago	729	935	83	106	83.5	106
Cincinnati	475	967	69.5	85	92	106
Akron	716	1,214	83	105	106.5	145
Detroit	728	1,234	83	106	106	145
Pittsburgh	781	1,278	84.5	109	145	152
Minneapolis	1,095	945	128.5	156	132.5	158
Kansas City	876	484	123	142	114.5	97
Average	750	964	91	113	108	126
Average (excluding Minneapolis and Kansas City)	672	1,047	80	101	103	125

Source: Economic Section, Wage and Hour Division, Memorandum, *Competitive Conditions as Affected by Transportation Costs in the Cotton Textile Industry.*

In the brief of the Committee of Southwest Textile Manufacturers, a comparison was made of transportation rates from 4 representative Texas points and 4 Southeastern points to 15 cities.[1] The reasons that governed the selection of these cities were not stated. Eight of the 15 cities, however, are among the largest in the United States, and include the principal Eastern textile markets of New York, Philadelphia and Boston. Table IV contains a comparison of the transportation rates to these 8 cities from Atlanta and Dallas. Via lowest rated routes to the 8 cities, the average rate per 100 pounds of finished cotton fabrics in the original piece is 98 cents from Atlanta and $1.19 from Dallas, a difference of 21 cents. This difference amounts to slightly less than one-fourth of a cent per pound of cloth on the basis of 88 pounds per 100 as packed for shipment.

The brief of the Committee of Southwest Textile Manufacturers also contained a comparison of the rail-water and all-rail rates on finished cotton piece goods from Scottdale, Alabama, and from Texas points to California ports.[2] Via rail-water routes, the rate per 100 pounds is $1.44 from Scottdale and $1.49 from the Texas points, a difference of 5 cents; via the all-rail route, the rate is $2.74 from Scottdale and $1.65 from the Texas points, a difference of $1.09 in favor of Texas.

In addition to outbound freight, there is also the problem of freight charges inward on raw cotton and supplies. It is even more difficult to get a clear picture of relative advantages or disadvantages in inward freight than outward freight. For example, the following rates on uncompressed cotton between Texas points and from Oklahoma points to Texas points compared with rates between points in the Southeast, was given to the Committee:

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[1] Brief, cited, pp. 16-18.
[2] Brief, cited, p. 15.

Distances	All-Rail Rates in Cents per 100 pounds, Any Quantity		
	Between Texas Points	From Oklahoma Points to Texas Points	Between Points in the Southeast
25 miles	28½	40	8
50 miles	36	50	11
75 miles	42	59	15
100 miles	49	68	19
150 miles	56½	79	24
200 miles	61½	86	29
300 miles	68½	96	42
400 miles	73	102	54
500 miles	77½	108	66
600 miles	82	114	70

Source: Letter from Mr. H. A. Burrow, January 21, 1939.

The rates in the above table are any quantity rates.[1] The Traffic Division of the Interstate Commerce Commission reports that in carload lots of raw cotton—approximately 25,000 pounds minimum—the rate from Troy, Oklahoma, to Denison, Texas, a distance of 50 miles, is 26 cents per 100 pounds. Moreover, from Sasakwa, Oklahoma, to Denison, Texas, a distance of approximately 100 miles, the rate per 100 pounds on raw cotton in carload lots is 27 cents.[2] Clearly, the rates shown in the table between points in the Southwest should be compared with the rates on carload lots from Oklahoma to Texas points.

Furthermore, comparatively low rates prevail on shipments on raw cotton from gins to the numerous compress points in the Southwest. When the cotton is shipped in carload lots from these concentration points to the mills, there is a refund to the mill owners of the rate from the gins to the compress points. Moreover, as

[1] See discussion in Economic Section, Wage and Hour Division, Memorandum, Competitive Conditions as Affected by Transportation Costs in the Cotton Textile Industry, p. 10.
[2] Ibid., p. 10.

Table IV.

Transportation Costs in Cents Per 100 Pounds on Finished Cotton Fabrics in Original Piece Via Lowest Rated Routes From Atlanta and Dallas to Eight of the Largest Cities of the United States.

Destination	Rates via lowest rated routes	
	Atlanta	Dallas
New York, New York	92	105
Philadelphia, Pennsylvania	92	105
Detroit, Michigan	106	145
Boston, Massachusetts	98	105
Pittsburgh, Pennsylvania	109	152
Buffalo, New York	116	131
Cincinnati, Ohio	85	106
Louisville, Kentucky	84	106
Totals	782	955
Averages	98	119

Source: Economic Section, Wage and Hour Division, Memorandum, *Competitive Conditions as Affected by Transportation Costs in the Cotton Textile Industry.*

distance increases, the difference between the rates on raw cotton in the Southwest and the Southeast becomes less. In addition, to North Carolina or South Carolina the rates on cotton from Texas and the Central Belt (Mississippi, Louisiana, and Arkansas) are higher than within Texas itself, as shown by special tabulations of the Traffic Division of the Interstate Commerce Commission.[1]

[1] Ibid., p. 10.

It was pointed out before the Committee that agencies exist for the correction of discriminatory freight rates.[2] One witness stated, indeed, that efforts were constantly being made to have rates of an alleged discriminatory character rectified.[3]

The Committee would like to emphasize again its view that the problem of freight rates is essentially a point to point problem. Even within one area, it would be impossible, by means of wage manipulation at the minimum wage level, to equalize transportation costs for all producers. Such an attempt would, in the opinion of the Committee, create more problems than it would solve, leading to new demands for differential treatment.

(b) *Cost of Living.* The second major argument for a lower minimum wage for the Southwestern textile industry was the alleged lower cost of living in that area.

In the opinion of the Committee, there was some confusion in the general discussion of this topic. The confusion grew out of the failure to distinguish clearly between the levels on which workers actually live in various parts of the country and the cost among regions or places of maintaining a given standard of living. It is only when workers in A can buy the same or an equivalent standard of living as workers in B with less money that the cost of living can be said to be lower in A than in B. Lower expenditures by workers in one place as compared with those in another may simply reflect differences in money incomes.

The Committee had presented to it the results of an elaborate cost-of-living study conducted by the Works

[2] As this term is defined in rate-making rules.
[3] Mr. H. A. Burrows, Hearings, II, p. 125.

Progress Administration in collaboration with the Bureau of Labor Statistics.[1] The W.P.A. constructed two standard budgets for a family consisting of husband, wife, and two children. The "maintenance budget" was stated to represent the "normal or average minimum requirements" for a wage-earner family of the designated size; in the "emergency budget" account was taken of "certain economies which may be made under depression conditions, (which) may contain health hazards if followed for any considerable period of time."[1] Certain adjustments were made to take account of regional variations in requirements: less fuel, for example, was allowed in Southern cities than in Northern cities.

The items in these budgets were priced in 59 cities for March, 1935. Since most important textile centers are cities with less than 500,000 population, averages for purposes of regional comparison were computed for 44 cities with a population of under half a million. These averages are shown below:

Region	Average cost of	
	Maintenance Budget (dollars)	Emergency Budget (dollars)
North Atlantic	1,276	908
North Central	1,230	884
South Atlantic	1,230	879
South Central	1,186	852
Western	1,255	905

The average cost of the maintenance budget in the South Central area was 3.6 per cent less than in the South Atlantic region, and at the emergency budget level the difference was only 3.1 per cent less. This comparison between the South Central and South Atlantic areas

[1] Mr. A. F. Hinrichs, Hearings, I, pp. 58-68.

[1] Ibid., p. 58.

is probably the most significant that can be made in terms of the present problem, for the chief concern of the Southwestern representatives was to obtain a minimum rate lower than that set for the Southeast. Plainly the average difference in the cost of an equivalent standard of living in the two regions in March, 1935, was very slight. The major regional difference, as disclosed by the W.P.A. study, was between the South Central and North Atlantic areas. The average cost of the maintenance budget in the South Central area was 7.1 per cent lower than in the North Atlantic region; at the emergency budget level the difference was 6.2 per cent.

The W. P. A. study revealed the fact that variations in living costs within a region are larger than variations in living costs among regions. Thus, at the maintenance budget level, the difference between the South Central and South Atlantic averages was $44. But the difference in cost between the least and most expensive city *within* the South Central region was $103, while the difference between the least and most expensive city in the South Atlantic area was $78. As in the case of transportation costs, therefore, the problem of living cost advantages or disadvantages is, at least in part, a point to point problem rather than a broadly regional problem.

Although living costs have increased by about 4.0 per cent since the W.P.A. study was made, the increase appears to have been spread rather evenly over the regions. It is believed, therefore, that the results of this study are still valid.

In the brief submitted by the Committee of Southwest Textile Manufacturers the statement is made that living costs per family are 25 per cent to 30 per cent lower in the Southwest than in other parts of the country.[1] No

[1] Brief, cited, p. 10.

substantiating evidence is given, however, except the general contention that family requirements for food, clothing, housing and fuel are lower in the Southwest because of climatic conditions. The brief also contains a table showing the average annual living costs for a family of 4 to be $761.00 in the Southwestern cotton mill areas.[2] No details of the budget on which this estimate is based are given, nor is any comparison made with other areas.

The Committee did not believe that sufficient difference in living costs existed between the Southwest and other cotton mill regions to justify a wage differential at the minimum wage level. This conclusion is based largely on the findings of the W.P.A. study summarized above. These findings were in general confirmed by an independent study made by the National Industrial Conference Board in March, 1937,[3] and were strengthened by material submitted by the American Federation of Labor.[4]

F. *General Summary of the Conclusions of the Committee.*

After attempting to take fully into account all relevant factors, the Committee determined that *at the present time* the recommendation of a 32½ cent minimum wage rate for the textile industry is the highest minimum wage rate for the industry which, having due regard to economic and competitive conditions, will not substantially curtail employment in the industry. This minimum wage will increase labor costs to a very moderate extent; since labor represents only one cost-factor in the manufacture of textiles, the effect of the minimum on total manufac-

[2] Ibid., p. 11.
[3] Mr. A. F. Hinrichs, Hearings, I, p. 60.
[4] Article entitled "Cost of Living in the South," prepared by Research Division, American Federation of Labor.

turing costs will be relatively slight. There is no reason to anticipate appreciable increases in retail selling prices as the result of the establishment of this minimum, and hence there is no reason to believe that employment will be substantially curtailed.

The Committee is convinced that the recommended minimum will not disturb the present regional distribution of the textile industry to any significant extent. The wage recommendation will have a fairly marked effect on the relatively small group of low-wage mills that operate on the periphery of the industry. It is precisely this group of mills that tends to inaugurate competitive wage-cutting practices, thus exerting a depressing influence on general wage standards for hundreds of thousands of workers whose livelihood depends upon the functioning of one of the oldest industries created by man. The recommended minimum wage will provide a measure of protection for the great bulk of mills, South and North, against a type of competition that is injurious to the industry and its workers and ultimately to the community as a whole.

The Committee was impressed with the able case presented by witnesses representing the employees in the industry for a minimum wage rate higher than the recommended rate.[1] In view of the total situation, however, the Committee could not see its way clear to recommend a rate in excess of 32½ cents at the present time.

The Committee gave due consideration to various possible classifications. The competitive interrelationship of products made from cotton, silk, rayon, flax, jute, and mixtures of such fibers lead the Committee to conclude

[1] Mr. Solomon Barkin, T. W. O. C., and associated witnesses, Hearings, III, pp. 224-307; and Brief, Appendix, cited. Mr. Boris Shishkin, A. F. of L., and associated witnesses, Hearings, III, pp. 310-348.

that the establishment of product classifications was not practicable. It further concluded that the data did not warrant any regional classification. The Committee's determinations as to classifications were made after weighing the evidence before it in the light of Section 8 (c) of the Act.

Recommendation.

Upon the basis of its investigation of conditions in the textile industry and of the foregoing analysis of the evidence, and pursuant to Section 8 of the Fair Labor Standards Act of 1938, the Committee makes the following recommendation:

Thirty-two and one-half cents (32½ cents) per hour shall be the minimum wage rate to be paid all employees in the textile industry defined (by Administrative Order No. 25, dated May 22, 1939) as follows:

(a) The manufacturing or processing of yarn or thread and all processes preparatory thereto, and the manufacturing, bleaching, dyeing, printing and other finishing of woven fabrics (other than carpets and rugs) from cotton, silk, flax, jute or any synthetic fiber, or from mixtures of these fibers; or from such mixtures of these fibers with wool or animal fiber (other than silk) as are specified in clauses (g) and (h); except the chemical manufacturing of synthetic fiber and such related processing of yarn as is conducted in the establishments manufacturing synthetic fiber;

(b) The manufacturing of batting, wadding or filling and the processing of waste from the fibers enumerated in clause (a);

(c) The manufacturing, bleaching, dyeing, or other finishing of pile fabrics (except carpets and rugs) from any fiber or yarn;

(d) The processing of any textile fabric, included in this definition of this industry, into any of the following products: bags; bandages and surgical gauze; bath mats and related articles; bedspreads; blankets; diapers; dish-cloths, scrubbing cloths and wash-cloths; sheets and pillow cases; table-cloths, lunch-cloths and napkins; towels; and window-curtains;

(e) The manufacturing or finishing of braid, net or lace from any fiber or yarn;

(f) The manufacture of cordage, rope or twine from any fiber or yarn;

(g) The manufacturing or processing of yarn or thread by systems other than the woolen system from mixtures of wool or animal fiber (other than silk) with any of the fibers designated in clause (a), containing not more than 45 per cent by weight of wool or animal fiber (other than silk);

(h) The manufacturing, bleaching, dyeing, printing or other finishing of woven fabrics (other than carpets and rugs) from mixtures of wool or animal fiber (other than silk) containing not more than 25 per cent by weight of wool or animal fiber (other than silk), with any of the fibers designated in clause (a), with a margin of tolerance of 2 per cent to meet the exigencies of manufacture.

Approved May 23, 1939.

DONALD M. NELSON,
Chairman.

Fred Lazarus, Jr., George Fort Milton, George W. Taylor, Paul Christopher, Francis P. Fenton, Sidney Hillman, R. R. Lawrence, Elizabeth Nord, Emil Rieve, H. A. Schroeder, Allan Barrows, G. Edward Buxton, John Nickerson, Members of Industry Committee No. 1.

Appendix A.

Table A—Percentage Increase in the Wage Bill of The Cotton Textile Industry as a Whole Resulting From the Establishment of Certain Specified Minimum Wage Rates.

Minimum Rate	Percentage Increase In Industry Wage Bill
27.5	0.8
30.0	1.9
32.5	4.0
35.0	7.0
37.5	11.1
40.0	15.9

Source: Economic Section, Wage and Hour Division, Memorandum, *The Possible Effect of Different Minimum (25 cents to 40 cents per hour) on Labor Costs, Manufacturing Costs and Prices,* p. 66.

Appendix A.

Table B—Percentage Increase in the Wage Bill in Integrated Mills in the North Resulting From the Establishment of Certain Specified Minimum Wage Rates.[1]

	Average Hourly Wage in August, 1938, of			
Minimum Hourly Wage Rate of:	37.5 and under 40.0 cents Percent	40.0 and under 42.5 cents Percent	42.5 and under 45.0 cents Percent	45.0 and under 50.0 cents Percent
27.5 cents	.21	.09	.04	.02
30.0 cents	.66	.26	.12	.04
32.5 cents	1.58	.57	.30	.10
35.0 cents	3.58	1.86	1.21	.56
37.5 cents	6.88	4.28	2.97	1.74
40.0 cents	11.19	7.56	5.45	3.52

Source: Economic Section, Wage and Hour Division, Memorandum, *The Possible Effect of Different Minima (25 cents to 40 cents per hour) on Labor Costs, Manufacturing Costs and Prices,* p. 6b.

[1] Including an allowance of 8.1 percent of the direct increase for increases above the minimum.

Table C.—Percentage Increase in the Wage Bill in Integrated Mills in the South Resulting from the Establishment of Certain Specified Minimum Wage Rates.[1]

Minimum hourly wage rate of	Average Hourly Wage, in August, 1938, of 20.0 and under 25.0 cents Percent	25.0 and under 30.0 cents Percent	30.0 and under 32.5 cents Percent	32.5 and under 35.0 cents Percent	35.0 and under 37.5 cents Percent	37.5 and under 40.0 cents Percent	40.0 and under 42.5 cents Percent	42.0 and under 45.0 cents Percent	45.0 and under 50.0 cents Percent
27.5 cents	9.32	4.22	1.41	.88	.56	.34	.39	.09	.15
30.0 cents	19.37	10.52	4.34	2.55	1.44	.82	.90	.22	.39
32.5 cents	29.79	18.21	9.72	5.97	3.59	2.02	1.75	.51	.80
35.0 cents	40.45	26.66	16.65	11.03	7.41	4.53	3.39	1.10	1.42
37.5 cents	51.25	35.54	24.32	16.99	12.30	8.18	5.96	2.19	2.53
40.0 cents	62.14	44.70	32.43	23.55	17.98	12.64	9.29	4.07	4.28

Source: Economic Section, Wage and Hour Division, Memorandum, *The Possible Effect of Different Minima (25 cents to 40 cents per hour) on Labor Costs, Manufacturing Costs and Prices*, p. 7a.

[1] Including an allowance of 14.4 percent of the direct increase for increases above the minimum.

Table D—Percentage Increase in the Wage Bill in Spinning Mills in the South Resulting From the Establishment of Certain Specified Minimum Wage Rates.[1]

Minimum Hourly Wage Rate of	Average Hourly Wage, in August, 1938, of					
	20.0 and under 25.0 cents Percent	25.0 and under 30.0 cents Percent	30.0 and under 32.5 cents Percent	32.5 and under 35.0 cents Percent	35.0 and under 37.5 cents Percent	37.5 and under 40.0 cents Percent
27.5 cents	8.99	3.55	1.19	.43	.19	.25
30.0 cents	18.96	9.19	3.41	1.05	.57	.64
32.5 cents	29.42	14.35	7.87	2.72	1.72	1.33
35.0 cents	40.11	26.31	14.44	6.98	4.67	2.84
37.5 cents	50.87	35.84	22.00	13.37	9.42	5.67
40.0 cents	61.71	45.60	30.12	20.69	15.34	9.93

Source: Economic Section, Wage and Hour Division, Memorandum, *The Possible Effect of Different Minima (25 cents to 40 cents per hour) on Labor Costs, Manufacturing Costs and Prices, p. 7b.*

[1] Including an allowance of 14.4 percent of the direct increase for increases above the minimum.

APPENDIX B.

List of Persons and Organizations Invited to Appear Before the Textile Industry Committee and its Subcommittees.

1. Invited to appear before Subcommittee B, Meetings November 1, 2 and 3, 1938:

Herman Mason, Executive Director, Allied Underwear Association, 1 Madison Avenue, New York, New York.

W. D. Anderson, American Cotton Manufacturers Association, Macon, Georgia.

Mrs. E. Beard, Association of Hand-Quilted Textile Industry, 1751 Deerwood Avenue, Louisville, Kentucky.

Lewis Levy, Secretary, Associated Southern Curtain Manufacturers, 1418 Washington Avenue, St. Louis, Missouri.

Bedding Manufacturers and Suppliers Association, 2 Lafayette Street, New York, New York.

Candlewick Bedspreads Manufacturers Association, Dalton, Georgia.

C. J. Murchison, President, Cotton Textile Institute, 320 Broadway, New York, New York.

Marvin Rosenberg, President, c/o Cameo Curtains, Inc., Curtain Manufacturers Guild, Inc., 267 Fifth Avenue, New York, New York.

International Ladies Garment Workers Union, Paramount Building, 1501 Broadway, New York, New York.

A. F. Allison, Secretary, International Association of Garment Manufacturers, 40 Worth Street, New York, New York.

J. L. Dubow, Executive Director, Merchants Ladies Garment Association, 225 West 34th Street, New York, New York.

Metropolitan Knitted Textile Association, 1440 Broadway, New York, New York.

The Middle States Textile Manufacturers Association, 228 Washington Street, Cannelton, Indiana.

S. J. Mills, Secretary, National Association of Bedding Manufacturers, 608 South Dearborn Street, Chicago, Illinois.

R. W. Alley, National Association of Comfortable Manufacturers, 61 Broadway, New York, New York.

National Association of Cotton Manufacturers, 80 Federal Street, Boston, Massachusetts.

A. C. Moore, Secretary, National Association of Finishers of Textile Fabrics, 40 Worth Street, New York, New York.

W. J. Parker, National Association of Lace Curtain Manufacturers, 7 East 44th Street, New York, New York.

National Association of Novelty Curtains, Bedspreads & Novelty Pillows, 165 Broadway, New York, New York.

National Association of Textile Dyers and Finishers, 465 Main Street, Cambridge, Massachusetts.

I. W. Blune, Secretary, National Federal of Textiles, 10 East 40th Street, New York, New York.

National Infants, Children's and Junior Wear Industries, 175 Fifth Avenue, New York, New York.

F. B. Shipley, Secretary, National Pajama Manufacturers Guild, 291 Broadway, New York, New York.

M. N. Mound, National Womens Undergarment Manufacturers Association, 295 Madison Avenue, New York, New York.

National Upholstery and Drapery Textile Association, 185 Madison Avenue, New York City.

N. G. Tooran, Counsel, Negligee Manufacturers Association, 271 Madison Avenue, New York, New York.

New England Bedding Manufacturers Association, 73 Tremont Street, Boston, Massachusetts.

J. H. Casey, Secretary, New England Curtain Manufacturers Association, 99 Chauncey Street, Boston, Massachusetts.

Northwest Textile Association, Morgan Building, Portland, Oregon.

Southern Textile Association, 118 West Fourth Street, Charlotte, North Carolina.

Textile Bag Manufacturers Association, 100 North LaSalle Street, Chicago, Illinois.

Tufted Bedspread Manufacturers Association, Dalton, Georgia.

C/o Harry Garfinkel, Undergarment League, Garfinkel, Ritter, 1448 Madison Avenue, New York, New York.

R. A. Cheney, Managing Director, Underwear Institute, 2 Park Avenue, Room 1219, New York, New York.

United Infants and Children's Wear Association, New York, New York.

United Knitted Outwear Association, New York, New York.

United Underwear Contractors Association, 225 West 34th Street, New York, New York.

United Women's Wear League of America, 10 West 33rd Street, New York, New York.

West Coast Textile Association, 939 South Broadway, Los Angeles, California

2. Invited to appear before Full Committee, Meetings, December 14, 15, 16 and 17, 1938:

Allied Drapery & Upholstery Trimming Association, 7 East 44th Street, New York, New York.

Allied Workers of the Textile Industry, Inc., (Nitto and Gaston, Attorneys) Peoples Bank Building, Passaic, New Jersey.

Amalgamated Lace Operatives (John Burns, President), 545 West Lehigh Avenue, Philadelphia, Pennsylvania.

American Cotton Manufacturers Association, Charlotte, North Carolina.

American Cotton Waste and Linter Exchange, 222 Summer Street, Boston, Massachusetts.

American Federation of Labor (Boris Shishkin), 901 Massachusetts Avenue, N. W., Washington, D. C.

American Lace Manufacturers Association, Inc. (Hugo N. Schloss, President), 1 West 34th Street, New York, New York.

American Wholesale Canvas Goods Manufacturers, c/o Canvas Products Company, St. Louis, Missouri.

Aponaug Manufacturing Company, (Robert D. Sanders, President-Treasurer), Jackson, Mississippi.

Associated Batting Manufacturers, 411 North 7th Street, St. Louis, Missouri.

Associated Bias Binding Industries, 18 East 41st Street, New York, New York.

Associated Braid and Body Hat Processors, c/o Siegel and Corn, 280 Broadway, New York, N. Y.

Associated Weaving Industries, 143 West 20th Street, New York, N. Y.

Association of Cotton Yarn Distributors, 800 Drexel Building, Philadelphia, Pennsylvania.

Bias Tape Institute, 1170 Broadway, New York, N. Y.

Burlap Association, 150 Washington Street, New York, N. Y.

Cosmopolitan Twine and Paper Association, 250 East 161 Street, New York, N. Y.

The Cotton Thread Institute, Inc. (David Snyder, Executive Director), 11 West 42nd Street, New York, N. Y.

Cordage Institute (J. S. McDaniel), 350 Madison Avenue, New York, N. Y.

Curtain Manufacturers Guild, Inc. (Marvin Rosenberg, President, c/o Cameo Curtains, Inc.), 267 Fifth Avenue, New York, N. Y.

Cotton Yarn Merchants Association, Drexel Building, Philadelphia, Pennsylvania.

Cloth Reel Manufacturers Association, 111 Broadway, New York, N. Y.

Cotton Textile Institute, 320 Broadway, New York, N. Y.

Dyers & Finishers Association of America, 329 Main Street, Paterson, New Jersey.

Dyers and Printers Emplcyers Association (Emanuel Shavick, Attorney for Association), Citizens Trust Building, Paterson, New Jersey.

Embroidery Manufacturers Association, 728 West Madison Street, Chicago, Illinois.

Federation of Dyers, Finishers, Printers and Bleachers of America (Joseph W. Knapik), President, affiliated with T. W. O. C.), 18 Church Street, Paterson, New Jersey.

Heavy Cotton Thread Association, 77 Franklin Street, Boston, Massachusetts.

Independent Dyers and Printers Association, 140 Market Street, Paterson, New Jersey.

Institute of Dyers and Printers (Chas. L. Auger, President), Alexander Hamilton Hotel, Paterson, New Jersey.

Interlining Manufacturers Association, 18 East 41st Street, New York, New York.

International Silk Guild, 250 Fifth Avenue, New York, New York.

Johnson & Johnson (Kenneth Perry, General Counsel) (Robert W. Johnson, President), New Brunswick, New Jersey.

Lace and Embroidery Association, 45 East 17th Street, New York, New York.

Mercerizers Association of America, 468 Fourth Avenue, New York, New York.

Middle Atlantic Canvas Manufacturers Association, 131 Arch Street, Philadelphia, Pennsylvania.

Middle States Textile Manufacturers Association, 228 Washington Street, Cannelton, Indiana.

Millinery & Dress Trimming, Braid and Textile Association, 37 West 39th Street, New York, N. Y.

Narrow Fabrics Institute (Wilwyn Herbert, Secretary), 309 State Street, New London, Connecticut.

National Association of Coated Shoe Tape Manufacturers 329 La Grange Street, West Roxbury, Boston, Mass.

National Association of Cotton Manufacturers (Russell T. Fisher), 80 Federal Street, Boston, Mass.

National Association of Dry Goods Batting Manufacturers, P. O. Box 109, Lockland, Ohio.

National Association of Finishers of Textile Fabrics, 40 Worth Street, New York, N. Y.

National Association of Textile Dyers & Finishers, 465 Main Street, Cambridge, Massachusetts.

National Association of Textile Printing Colorists, 465 South Main Street, Cambridge, Massachusetts.

National Association of Waste Material Producers, 400 West Madison Avenue, Chicago, Illinois.

National Cotton Fibers Association, 666 North Lake Shore Drive, Chicago, Illinois.

National Federation of Textiles, 10 East 40th Street, New York, New York.

National Flax Tow Manufacturers Association, 1695 Hewitt Avenue, St. Paul, Minnesota.

National Rayon Weavers Association, 40 Worth Street, New York, New York.

National Textile Processors Guild (Harold Karzenik, Executive Director), 51 Chambers Street, New York, New York.

National Twine and Cordage Association, 44 North Front Street, Philadelphia, Pennsylvania.

National Uphostery and Drapery Textile Association, Inc. (A. W. Macready, General Manager), 1441 Broadway, New York, New York.

New Bedford Textile Council, New Bedford, Massachusetts.

New England Curtain Manufacturers Association (Charles M. Goldman, Counsel), 113 Barrister Hall, 11 Pemberton Square, Boston, Massachusetts.

Northwest Textile Association, Morgan Building, Portland, Oregon.

Print Cloth Group of Cotton Manufacturers (Wm. P. Jacobs, Secretary-Treasurer), Carolina Avenue, Clinton, South Carolina.

Rayon and Synthetic Yarn Processing Association, 51 Madison Avenue, New York, New York.

Rhode Island Textile Association (E. F. Walker, Secretary-Treasurer), 49 Westminster Street, Providence, Rhode Island.

Rocky Mountain Canvas Goods Manufacturers Association, 1421 Larimer Street, Denver, Colorado.

Silk Commission Manufacturers Association, c/o A. Brenman, Paterson, New Jersey.

Silk Dyers Association of America, 561 Madison Avenue, Paterson, New Jersey.

Silk Dyer's & Printers Association, 262 Main Street, Paterson, New Jersey.

Silk Manufacturers Association, 132 Market Street, Paterson, New Jersey.

Soft Fibre Institute (Geo. F. Quimby, Secretary-Treasurer), 9 Rockefeller Plaza, New York, New York.

Solid Braided Cord Manufacturers Association, 1405 Healy Building, Atlanta, Georgia.

Southern Canvas Goods Manufacturers, c/o Nashville Tent & Awning Company, Nashville, Tennessee.

Southern Combed Yarn Spinners Association, Gastonia, North Carolina.

Southern States Industrial Council, 1103 Stahlman Building, Nashville, Tennessee.

Southern Textile Association, 218 West Moorhead Street, Charlotte, North Carolina.

Southwest Textile Manufacturers Committee, c/o Texas Textile Mills, Dallas, Texas.

Textile Bag Manfacturers Association (L. A. Gravelle), Shoreham Building, Washington, D. C.

Textile Converters Association, 1450 Broadway, New York, New York.

Textile Fabrics Association, 40 Worth Street, New York, New York.

Textile Refinishers Association, 1450 Broadway, New York, New York.

Textile Workers Organizing Committee, 44 East 23rd Street, New York, New York.

Throwsters Research Institute (George A. Urlaub), 468 Fourth Avenue, New York, New York.

Tufted Bedspread Manufacturers Association (Fred R. Westcott, Chairman), Dalton, Georgia.

United Automobile Workers of America (T. W. O. C.), Cotton Goods Division (Carl F. Thrasher, Secretary), Pengelly Building, Flint, Michigan.

United Office & Professional Workers of America, (c/o Eugene Turner) 80 West 40th Street, New York, New York.

United States Hemp Brokers Association, 90 Wall Street, New York, New York.
United Upholstery Manufacturers Association, Fourth and Cambria Streets, Philadelphia, Pennsylvania.
Upholstery & Decorative Fabrics Association, 515 Madison Avenue, New York, New York.
Velvet Manufacturers Association (Frank R. Wheeler, President), 10 West 39th Street, New York, New York.
Waste Manufacturers' Association (C. Lochman), Main and Carson Streets, Philadelphia, Pennsylvania.
Weaving Specialties Association, 2100 West Allegheny Avenue, Philadelphia, Pennsylvania.
Women Elastic Institute, 51 Winthrop Street, Boston, Massachusetts.
Yarn Dyers' Association, 381 Fourth Avenue, New York, New York.

3. Appearance of witnesses before Subcommittee D, Meetings, March 1 and 2, 1939, was arranged by Mr. Charles A. Cannon, employer member of the Committee.

APPENDIX C.

List of Persons Who Appeared Before the Full Committee and Its Subcommittees.

Full Committee, Meeting of October 11 and 12, 1938.

October 11, 1938:
Elmer F. Andrews, Administrator of the Wage and Hour Division of the Department of Labor.
Calvert Magruder, General Counsel of the Wage and Hour Division.

A. F. Hinrichs, Chief Economist of the Bureau of Labor Statistics.
Samuel Gompers, Chief Clerk of the Department of Labor.

October 12, 1938:
A. F. Hinrichs, Chief Economist of the Bureau of Labor Statistics.
N. A. Tolles, Assistant Chief Economist, Wage and Hour Division.

Subcommittee "B", Meeting of October 12 and 13, 1938.

N. A. Tolles, Assistant Chief Economist, Wage and Hour Division.
Spencer W. Pitts, Office of General Counsel.

Subcommittee "C", Meeting of October 26 and 27, 1938.

A. F. Hinrichs, Chief Economist of the Bureau of Labor Statistics.
Carroll R. Daugherty, Chief Economist, Wage and Hour Division.

Subcommittee "B", Meeting of November 1, 2, and 3, 1938.

November 1, 1938:
J. K. Watson (Cotton Textile Institute) introduced the following:

C. W. Dall, President, National Rayon Weavers Association.
B. C. Trotter, Marshall Field Company, Chicago, Illinois.
C. E. Neisler, President, Neisler Mills.
Albert H. Crossman, Utica & Mohawk Cotton Mills, Utica, New York.

Ernest R. Boyd, Pequot Mills, Salem, Massachusetts.
K. P. Lewis, Erwin Cotton Mills Company, Durham, North Carolina.

National Federation of Textile Workers, New York, New York:
Miss I. L. Blunt.

Tufted Bedspread Manufacturers Association, Dalton, Georgia:

Fred R. Westcott, Chairman.
A. J. Carter, Chattanooga, Tennessee.
John T. Duncan, Canton, Georgia.

New England Curtain Manufacturers Association:
Chas. M. Goldman, Counsel.
Lewis M. Graboys, Puritan Curtain Company, Fall River, Massachusetts.
A. L. Gordon, Royal Curtain Manufacturing Company, Boston, Massachusetts.

Curtain Manufacturers Guild, Inc.:
B. H. Siegeltuch, Counsel.
Marvin Rosenberg, President (of Guild) Cameo Curtains, Inc., New York, N. Y.
Hoppel Schwartz, Majestic Curtain Company, New York, New York.

November 2, 1938:
International Ladies Garment Workers Union:
*Lazare Teper.

Allied Underwear Association:
*Meyer B. Eliassoph.
Mitchell Schneider.
Elias Landsberger.
Arthur Adelman.

* Did not speak.

Negligee Manufacturers Association:
*Samuel Denitz.

Lingerie Manufacturers Association:
Matthew Touraine.

United Underwear Contractors Association:
Abraham Beckerman.

(Former) Undergarment League:
B. Weiss, c/o Garfinckel & Retter, New York, New York.

United Infants' and Children's Wear Association:
Max H. Zuckerman, Executive Secretary.

National Association of Bedding Manufacturers, Chicago, Illinois:
J. P. Fanning, Secretary.

November 3, 1938:

International Ladies Garment Workers Union:
Lazare Teper.
Elias Lieberman, Counsel.

Undergarment and Negligee Union of New York (affiliate of I. L. G. W. U.):
Samuel Shore, Manager.

United Knitted Outwear Association:
Harold R. Lhowe, Executive Director.
*H. H. Cohen, Philadelphia, Pennsylvania.
*Phillip Frankel, Cleveland, Ohio.
*D. Rhenhour, New York, New York.
*R. W. Whitman.
*Ingram Bergman, Philadelphia, Pennsylvania.

* Did not speak.

Underwear Institute:

Roy Cheney, Managing Director.

Ralph M. Jones, President of Institute, Utica Knitting Company, Utica, N. Y.

*Wm. Ravnar, Warvern Knit Wear Company, New York, New York.

*H. E. Sims, Atlas Underwear Company, Piqua, Ohio.

*T. O. Moore, P. H. Hanes Knitting Company, Winston-Salem, North Carolina.

*J. D. Ambrose.

*F. E. Simmons.

*Miss Joyce Page, *H. H. Dill, Secretary to Mr. Cheney.

*H. B. Snader, Vanity Fair, Reading, Pennsylvania.

*W. W. Moyer, Reading, Pennsylvania.

*A. H. Walker, Brooklyn, New York.

E. J. McMillan, President, Standard Knitting Mills, Nashville, Tennessee.

*L. B. Boynton, Newton, Massachusetts.

*Benjamin Gibler, Philadelphia, Pennsylvania.

Textile Bag Manufacturers Association:

L. A. Gravelle, Shoreham Building, Washington, D. C.

H. L. Condon, President, Chicago, Illinois.

P. E. Morrill, Chicago, Illinois.

Observers:

*Joe Brodinsky (Knit Outerwear Group).

*Meyer B. Eliassoph (Allied Underwear Association).

*Harold R. Lhowe (National Knit Outerwear Association).

* Did not speak.

Subcommittee "B," Meeting of November 4, 1938.

N. A. Tolles, Assistant Chief Economist, Wage and Hour Division.
Nathan Fine, Economic Section, Wage and Hour Division.

Subcommittee "B", Meeting of December 9 and 10, 1938.

N. A. Tolles, Assistant Chief Economist, Wage and Hour Division.

Full Committee, Meeting of December 14, 15, 16, and 17, 1938.

December 14, 1938:

Cotton Textile Institute:
*John K. Watson.
G. H. Dorr.
*Paul B. Halstead.
*R. E. Henry.
*K. P. Lewis.
*W. M. McLaurine.
H. E. Michl.
*Fred Morrison.
Dr. C. T. Murchison, President.
*Mrs. A. V. Roberts.
*J. E. Serrine, Lowell Textile Engineer.

National Association of Finishers of Textile Fabrics:
*Miss Alice Moore, Secretary.
*John Manley.
*Wm. J. Matthews.
*M. M. Horblit.

Soft Fibre Institute:
*H. H. Gallup.

* Did not speak.

National Association of Cotton Manufacturers:
*Russell T. Fisher.
*J. J. Riley.

National Rayon Weavers Association:
*C. W. Dall, President.

Throwsters Research Institute:
*George A. Urlaub.

National Federation of Textiles:
*Miss I. Blunt.

American Federation of Labor:
*Miss M. L. Parks.

Textile Workers Organizing Committee:
*John Abt.
*Solomon Barkin.
*S. A. Lischinsky.

Textile Fabrics Association:
*W. P. Fickett.

The Cotton Thread Institute:
*David Snyder.

A. F. Hinrichs, Chief Economist of the Bureau of Labor Statistics.

December 15, 1938:
Cotton Textile Institute:
*John K. Watson.
*G. A. Dorr.
*H. E. Michl.
*Paul Halstead.
*Dr. C. T. Murchison, President.

* Did not speak.

*(Fred W. Morrison.)
*(Mr. Seymour Sheriff.)
*K. P. Lewis.
*R. E. Henry.
*W. M. McLaurine.
*J. E. Serrine.
*Herman Cone.

National Association of Finishers of Textile Fabrics:
*Miss Alice Moore.
*John T. Manley.
*Wm. J. Matthews.
*M. M. Horblit.

Soft Fibre Institute:
*Geo. F. Quimbley.

National Association of Cotton Manufacturers:
Russell T. Fisher.

Throwsters Research Institute:
Geo. A. Urlaub.

The Cotton Thread Institute:
*David Snyder.

Committee of Southwest Textile Manufacturers:
Burt C. Blanton, Consulting Industrial Engineer.
H. A. Burrows, Chairman.
*W. L. Steel.
*John Abt.
*R. L. Conn (Atlanta, Georgia).
*C. W. Dannenberg.
*J. W. Knapik.
*Geo. Powell.

* Did not speak.

*Jos. L. Hueter.
*Ed. F. Doolan.
*Geo. Nejmeh.
*Solomon Barkin.
*S. A. Lischinsky.

National Rayon Weavers Association:
*C. W. Dall, President.
*Congressman Luther Johnson, Texas.

National Federation of Textiles:
*Miss I. L. Blunt.

American Federation of Hosiery Workers:
*J. W. Bamford.
*Isador Katz (General Counsel).

Johnson & Johnson:
R. W. Johnson, Chairman of Board of Directors.
*K. Perry, General Counsel.
*N. L. Smith.

National Textile Processors Guild:
Harold Korzenik, Executive Director.

American Federation of Labor:
*Miss M. L. Parks.

New Bedford Textile Council (labor).
*Herbert Severs.
*Wm. E. G. Batty (Secretary).
*Wm. Baron.

Dyers, Printers Employers Association:
Paul Rittenberg (for Emanuel Shavick).

* Did not speak.

A. F. Hinrichs, Chief Economist of the Bureau of Labor Statistics.

December 16, 1938:

Textile Workers Organizing Committee:
Solomon Barkin, Research Director.
John Abt, General Counsel.
Ed. F. Doolan, Textile Workers of Fall River, Massachusetts.
Jos. L. Heuter.
George Powell.
Geo. Nejmeh.
*C. W. Dannenberg.
*A. R. Bulles, United Rope and Cordage Workers.
*A. F. Neider, United Rope and Cordage Workers.
W. L. Gilman, United Rope and Cordage Workers.
*S. A. Lischinsky.
*R. L. Conn, Atlanta, Georgia.
Jos. W. Knapik, Federation of Dyers, Finishers & Bleachers of America, American Federation of Labor.
Boris Shishkin.
*Miss M. L. Parks.
T. J. Burns (New Jersey), President of A. L. O.
John Van Volrenewyck (New York).
C. M. Fox (North Carolina).
Wm. E. G. Batty, New Bedford Textile Council.
*Wm. Baron, New Bedford Textile Council.
*Herbert Severs, New Bedford Textile Council.

Allied Workers of Textile Engraving Industry, Inc.:
Chas. F. Nitto, Attorney.
*John Kunis.

Amalagamated Lace Operatives of America:
John Burns, President.
*Everett Chambers.
*Joseph Long.

* Did not speak.

United Office and Professional Workers of America:
L. Allen.
*James Gorham.

Cotton Textile Institute:
*Dr. C. T. Murchison, President.
*C. H. Dorr.
*H. E. Michl.
*Fred Morrison.
*Seymour Sheriff.
*W. M. McLaurine.
*R. E. Henry.
*Herman Cone.
*J. E. Serrine.
*K. P. Lewis.

National Association of Finishers of Textile Fabrics:
*Miss Alice Moore.
*Wm. J. Matthews.
*M. M. Horblitt.
*J. K. Milliken.
*John T. Manley.

Soft Fibre Institute:
*Geo. F. Quimbley.

National Association of Cotton Manufacturers:
*Russell T. Fisher.

Throwsters Research Institute:
*Geo. A. Urlaub.

The Cotton Thread Institute:
*David Snyder.

* Did not speak.

National Rayon Weavers Association:
*C. W. Dall.

National Federation of Textiles:
*Miss I. L. Blunt.

Textile Fabrics Association:
*W. P. Fickett.

Committee of Southwest Textile Manufacturers:
*H. A. Burrows.
*W. L. Steel.

December 17, 1938:

Cotton Textile Institute:
Dr. C. T. Murchison, President.
*H. E. Michl.
*R. E. Henry.
J. E. Serrine, Lowell Textile Engineer.
*G. H. Dorr.
*Wm. M. McLaurine.

National Association of Finishers of Textile Fabrics:
Miss Alice Moore, Secretary of Association.
*John T. Manley.
*Wm. J. Matthews.

Textile Fabrics Association:
*W. P. Fickett.

National Association of Cotton Manufacturers:
*Russell T. Fisher.

National Rayon Weavers Association:
*C. W. Dall, President.

* Did not speak.

Textile Workers Organizing Committee:
*Solomon Barkin.

A. F. Hinrichs, Chief Economist of the Bureau of Labor Statistics.

Subcommittee "D," Meeting of January 24, 1939.

Burton E. Oppenheim, Chief of Industry Committee Section, Wage and Hour Division.
Carroll R. Daugherty, Chief Economist, Wage and Hour Division.
Frank Stocking, Economic Section, Wage and Hour Division.

Subcommittee "D" Wages, Meeting of March 1 and 2, 1939.

March 1 and 2, 1939:

Witnesses heard on March 1:

R. O. Arnold, Covington Manufacturing Company, Covington, Georgia.
Herbert O. Bergdahl, Associated Merchandise Corporation, New York, N. Y.
L. J. Burns, W. F. Grant Company, New York, New York.
H. P. Claussen, Bemis Bros. Bag Company, Boston, Massachusetts.
J. P. Fox, The Blue-Bell Globe Manufacturing Company, Greensboro, N. C.
P. W. Lewis, Ely-Walker Dry Goods Company, St. Louis, Missouri.
John A. Law, Saxon Mills, Spartanburg, South Carolina.

* Did not speak.

W. M. McLaurine, American Association of Cotton Manufacturers, Charlotte, North Carolina.
R. C. Moore, Rhodehiss Manufacturing Company, Lenoir, North Carolina.
Earl E. Stall, F. W. Poe Manufacturing Company, Greenville, South Carolina.
Donald B. Transill, Pepperell Manufacturing Company, New York, New York.
Carroll R. Daugherty, Chief Economist, Wage and Hour Division.

March 2, 1939:
No witnesses.

Full Committee, Meeting of March 21, 1939.

Elmer F. Andrews, Administrator of the Wage and Hour Division of the Department of Labor.
Carroll R. Daugherty, Chief Economist of the Wage and Hour Division.

Subcommittee "D", Meeting of March 22, 1939.

Sherman Trowbridge, Assistant Chief, Industry Committe Section of the Wage and Hour Division.
Spencer W. Pitts, Office of General Counsel.
N. A. Tolles, Assistant Chief Economist, Wage and Hour Division.

Subcommittee "A", Meeting of April 4, 1939, in New York.

N. A. Tolles, Assistant Chief Economist, Wage and Hour Division.

Subcommittee "E", Meeting of May 17, 1939, in New York.

Burton E. Oppenheim, Chief of Industry Committee Section of the Wage and Hour Division.
Harry M. Douty, Economic Section of the Wage and Hour Division.
Spencer W. Pitts, Office of General Counsel.

APPENDIX "D".

Briefs, Exhibits, and Other Written Material Made Part of the Record of the Committee and its Sub-committees.

1. Subcommittee B, meetings, November 1, 2 and 3, 1938:

Brief of Sanitary Institute of America for Wiping Cloth Industry.

Brief of Curtain Manufacturers Guild, Inc.

Brief of Textile Institute and National Rayon Weavers Association.

Brief of Tufted Bedspread Manufacturing Association.

Brief and 7 Exhibits of International Ladies Garment Workers Union.

Brief of National Knitted Outerwear Association.

Underwear Institute:

Exhibit A—"Job Definition for Needle Trade File Code".

Exhibit B—"1937 Departmental Merchandising and Operating Results of Department Stores and Specialty Stores".

Exhibit C—Letter to Mr. Chaney from Union Special Machine Company of Chicago, Illinois.

Exhibit D—"Production of Childrens and Infants Knit Underwear".

Briefs: Dated August 24, October 10, and Supplement of November 3, 1938, referred to following reports in testimony:

"Employment and Payrolls" R. 820, Bureau of Labor Statistics.

"Geographical Variation in Hours and Wages During 1933 and 1935" R. 735, Bureau of Labor Statistics.

Brief of Textile Bag Manufacturers Association.

Brief of Allied Underwear Association for consideration of subcommittee B.

Persons and Organizations submitting written testimony subsequent to meetings of November 1, 2 and 3, 1939:

National Association of Lace Curtain Manufacturers.

National Women's Undergarment Manufacturers Association.

National Association of Finishers of Textile Fabrics.

Mercerizers Association of America.

Institute of Manufacturing of Bagging for Covering Raw Cotton.

Nashua Manufacturing Company (cotton blanket manufacturing).

Marshall Field & Company (manufacturing division, Spray, North Carolina.

Mattress and Bedding Manufacturers:

(In addition to appearance of National Association of Bedding Manufacturers at meeting, the following firms expressed themselves by individual letters):

Louisville Bedding Company, Louisville, Kentucky.

Jamison Anchor Bedding Company, Chicago, Illinois.

Southern Spring Bed Company, Atlanta, Georgia.

Marquardt Company, Milwaukee, Wisconsin.

Acme Mattress Company, Indianapolis, Indiana.

Foster Bros. Manufacturing Company, Utica, New York.

A. Brandwein & Company, Chicago, Illinois.

Burton-Dixie Corporation, Chicago, Illinois.

Greenpoint Metallic Bed Company, Brooklyn, New York.

Sealy Mattress Company, Kansas City, Missouri.

2. Full Committee Meetings, December 14, 15, 16, and 17, 1938:

Bureau of Labor Statistics Study on Wages on Cotton Goods Manufacturing.

Memorandum on "Cost of Living"—A. F. of L.

Memorandum of Textile Fabrics Association, December 23, 1938

Report of Narrow Fabrics Institute.

Report on Standard Cotton Division.

Petition of Dyers and Printers Employers Association, October 26, 1938.

Report of Mississippi Textile Manufacturing Association, December 14, 1938.

Memorandum of New England Curtain Manufacturers Association:

Memorandum of Curtain Manufacturers Guild, Inc.

Report of Rhode Island Textile Association.

Memorandum of International Union of Operating Engineers.

Brief of Textile Workers Organizing Committee and Supplement.

Statement of Cotton Textile Institute.

Memorandum of National Textile Processors Guild.

Brief of Southwest Textile Manufacturers.

Bureau of Labor Statistics Report on Silk and Rayon Industry.

Brief of Federation of Dyers, Finishers, Printers, and Bleachers of America (T. W. O. C. of C. I. O.).

Brief on New Bedford Textile Council.

Report of Allied Workers of the Textile Engraving Industry, Inc.

Brief of Professional Workers of America.

Brief of National Association of Finishers of Textile Fabrics.

Report of George Nejmah (T. W. O. C.)

Correspondence from:

Alabama Cotton Mfrs. Association, November 1, 1938.

Amalgamated Lace Operatives of America, September 20, October 21, 1938.

Aponaug Manufacturing Company, August 25, 1938.

Bonham Cotton Mills, January 21, 1939.

Boshamer & Company Yarns, December 22, 1938.

Buck Creek Cotton Mills, October 10, 1938.

Cranston Print Works, September 19, 1938.

Fall River Industrial Council (Telegram November 3, 1938).

Johnson and Johnson Company, October 13 and 14, December 8, 1938.

Silk Commission Manufacturers Association, A. Brenman, Oct. 28, 1938.

Joseph W. Martin, Jr., M. C. (Telegram October 14, 1938).

National Textile Processors Guild, Inc., January 16, 1939.

Silk Dyers Association of America, November 4 and 16, 1938.

Soft Fibre Institute, November 7, and December 13, 1938.

Textile Workers Organizing Committee, December 7, 1938.

Textiles Incorporated, Gastonia, North Carolina, Sept. 12, 1938.

Tufted Bedspread Manufacturers Association, January 20, 1939.

B. T. Wilson, Wake Forest, South Carolina, November 22, December 12, 1938.

3. Subcommittee D, Meetings March 1 and 2, 1939:

Brief, H. P. Claussen, Manager, Cotton Goods Dept., Bemis Bag Company.

Brief, American Cotton Manufacturers Association by Mr. McLaurine.

Statement, R. O. Arnold, Covington Manufacturing Co., Covington, Ga.

Brief, P. W. Lewis, Ely-Walker Dry Goods Company, St. Louis, Missouri.

Resolution, February 4, 1939, T. W. O. C. of South Carolina.

Letters:

Abraham Bremman, Counsel for Silk Commission Manufacturers Association, March 4, 1939.

David L. Cole, Counsel for Silk & Rayon Manufacturers Association, March 15, 1939.

Iredell Finishing Company, Statesville, North Carolina, October 13, 1938.

Chairman of T. W. O. C., Newberry, North Carolina, October 27, 1938.

Telegram, Paul A. Redmond, President, Alabama Mills, Inc., Birmingham, Alabama, March 23, 1939.

4. Reports and Data submitted to Committee by B. L. S. and Economic Section:

Report on "Definition of Textile Industry" by B. L. S.

Nineteenth Report on Average Hourly Earnings in Cotton Goods Industry, April, 1937, by B. L. S.

Wages in "Cotton Goods Manufacturing" by B. L. S.

"Competitive Conditions as affected by Transportation Costs in Cotton Textile Industry" by Economic Section.

"The Possible Effect of Different Minima (25¢ to 40¢ per hour) in the Cotton Textile Industry on Labor Cost, Manfacturing Costs and Prices" by Economic Section.

SUPPLEMENTARY MINORITY REPORT OF THE TEXTILE INDUSTRY COMMITTEE SIGNED BY E. L. FOSHEE.

Minority Report.

To the Administrator Wage and Hour Division Under the Fair Labor Standards Act of 1938.

In addition to concurring in the Minority Report as submitted to the Administrator, I respectfully submit an additional point, to-wit:

It is my judgment that the majority erred in refusing to grant a 2½ cent differential to and in favor of the Southwestern Cotton Mills. The Act is plain on this point (Sec. 8 (c)). And the Southwestern brief (to which the Administrator's attention is respectfully directed—specifically to the section devoted to the study, including tables and charts, on freight costs) presents undisputed higher rates to 15 major points, such point chosen because they are the actual major markets of the Southwest; and further in a letter dated January 21, 1939, (see record) they submitted actual freight charges paid on incoming and outgoing freight acknowledged in Subcommittee "D", in committee discussions not of record, to be excessive. To say, as does Mr. Daugherty in his study of transportation, that "per mile" there is no "discrimination", is failing to meet the issue. The issue is, Does the Southwest have to pay more money for freight? The answer, according to the testimony is, It does. And

to say with a wave of the hand that it is not of sufficient importance to have any effect, is to deny the record on the point.

On the question of cost of living the majority likewise erred. The Southwest brief on this point (which see) presented figures compiled by a survey on the ground showing a much lower cost than any other figures presented from any other region. Furthermore, carefully examined, the Bureau of Labor Statistics figures on cost of living themselves give the Southwest an advantage. And in interpreting same Mr. Hinrichs acknowledged a 5% or 6% advantage. And 6¢ of a 32½¢ wage rate is 1.62½¢.

Add to the 1.62½¢ an approximate 2¢ an hour allowed in the lowest figures of calculations made in Subcommittee "D", verifiable but again not of record, on the point of freight charges—discussed above—and we get a differential, demonstrable and demonstrated of 3.62½¢ per hour. This is the minimum and in no sense was accepted as correct by the Southwestern men in their testimony, except as proving positively the minimum.

I conclude, therefore, that the committee majority erred when they defeated my motion and by so doing refused to set up a 2½¢ differential in favor of the Southwest.

In view of the above, and of the further relevant testimony in the record, particularly as to the critical condition of the majority of cotton mills in the Southwest, I pray the Administrator to find with me on the point of differential and that he decline the recommendation of the majority of Textile Committee No. 1, and that he refer the matter back to the said committee or to an-

other committee for correct determination according to the Fair Labor Standards Act of 1938.

(Signed) E. L. FOSHEE,
(E. Leon Foshee)
Member, Textile Committee
No. 1.

Washington, D. C., May 22, 1939.

STATEMENT OF THE MINORITY

OF

INDUSTRY COMMITTEE No. 1
SUBMITTED TO

THE ADMINISTRATOR OF THE FAIR LABOR STANDARDS ACT OF 1938

This statement is in opposition to the recommendation of the Majority of Industry Committee No. 1, appointed for the Textile Industry under the Fair Labor Standards Act of 1938.

The Minority members of the Committee support the objectives of the Wage-Hour law. The decision to oppose the recommendation of the Majority was therefore taken with reluctance. However, the Minority earnestly feel that the success of this program to raise the living standards of the workers and to restore some measure of stability and prosperity to the industry is dependent upon a careful, informed, and realistic approach to these objectives, with due regard at every step to actual conditions prevailing within the industry, the declared policy of the Congress, and the plain requirements of the Act.

Stated differently, the Minority feel that nothing could so quickly and effectively discredit this whole pioneering approach to the problem of low wage and living standards as precipitate and ill-considered action at this stage, with its almost inevitable dislocations and loss of employment.

Believing this, and being firmly convinced; after hearing all of the testimony and carefully examining the record, that the recommendation of the Majority was not made in accordance with law or supported by the evidence adduced by the Committee or considered by it, the Minority respectfully request that such recommendation be disapproved by the Administrator for the following reasons:

A. *The recommendation of the Majority was not made in accordance with law.*

1. The Committee itself is not constituted with due regard to the geographical regions in which the industry is carried on.

Section 5 (b) of the Fair Labor Standards Act of 1938 (herein referred to as the "Act"), provides as follows:

"An industry committee shall be appointed by the Administrator without regard to any other provision of law regarding the appointment and compensation of employees of the United States. It shall include a number of disinterested persons representing the public, one of whom the Administrator shall designate as Chairman, a like number of persons representing employees in the industry, and a like number representing employers in the industry. *In the appointment of persons representing each group, the Administrator shall give due regard to the geographical regions in which the industry is carried on.*" (Italics supplied.)

The intent of Congress in providing that representatives of each of these groups— i. e., the public, the employees, and the employers—should be appointed with due regard to the geographical regions in which the industry is carried on is, of course, obvious. In the words of Mr. Hinrichs, Chief Economist of the Bureau of Labor Statistics, "a true understanding of cotton-textile wages requires that they be viewed against the economic background of the areas in which the industry is located." [3] To assure this, Congress mandatorily required that the personnel of an industry committee shall be appointed with *due regard to the areas in which the industry is carried on* and therefore presumably comprised of persons familiar with the conditions peculiar to such industry as it operates in the various sections and localities.

Of the total number [1] of employees under the jurisdiction of Industry Committee No. 1, 351,000 or 54 per cent, are located in the cotton-growing states, and 299,000 or 46 per cent, are located in other sections, principally in New England.

Any wage order will affect primarily employees of the related industry group of cotton manufactures, the largest group under the jurisdiction of Industry Committee No. 1, and the heaviest burden will fall upon the spinning division of the industry, approximately three-fourths [2] of which is located in the cotton-growing states.

An examination of Administrative Order No. 1 reveals that four of the seven public members, five of the seven

[3] Note: Bulletin 663, U. S. Dept. of Labor, Bureau of Labor Statistics at p. 73.

[1] Note: Estimated at around 650,000.

[2] Note: At the end of July, 1938, there were 18,798,000 cotton spindles in place in the cotton-growing states, of which 18,128 were reported active. As of the same date, the New England states reported 6,777 spindles in place, of which 5,919 were active. Bulletin 663, Department of Labor, p. 20.

employee members, and three of the seven employer members—a total of twelve of the twenty-one members of Industry Committee No. 1—were appointed from non-cotton-growing states. In other words, while 75 to 80 per cent of the industry which would be directly affected by a wage order is located in the South, a majority of the Committee as a whole and an overwhelming majority of one of its groups (Employee) was appointed from other sections.

Can this fairly be said to be in compliance with the mandatory provision of section 5 (b) which requires that in the "appointment of persons representing *each group*, the Administrator shall give due regard to the geographical regions in which *the industry is carried on*"?

Moreover, apart from the fact that only two of the seven employee members were appointed from cotton-growing states, another serious question arises as to whether the personnel of this group may be said to be representative of the employees of the Textile Industry as a whole. It is believed that every member of the present employee group is a representative of organized labor, whereas the vast majority of textile workers are unorganized. The Act requires the appointment of persons "representing employees in the industry". With most of the industry carried on in the South and with an overwhelming majority of its employees not members of any labor union, can it be said that this requirement of the law is satisfied by the appointment of five members out of seven from the ranks of organized labor and from a different section of the country?

The Minority do not feel that the committee was appointed or is at present consituted in accordance with the plain requirements of the Act and accordingly hereby sub-

mit that the recommendation of such committee as thus constituted, should not be recognized by the Administrator.

2. Administrative Order No. 1, under which Industry Committee No. 1 was appointed, provides no sufficient standards for the guidance of the committee.

The pertinent provisions of Administrative Order No. 1 are found in Paragraph 3 thereof, which is as follows:

"The Industry Committee herein created, in accordance with the provisions of the 'Fair Labor Standards Act of 1938' and rules and regulations promulgated thereunder, *shall investigate conditions* in the textile industry and recommend to the Administrator", etc. (Italics supplied.)

In effect, Congress has by this Act delegated certain legislative authority to the Administrator. Without discussing at this time the case law on the subject, it is nevertheless established that such a delegation of legislative power, to be valid, must be made and exercised in accordance with certain reasonable and clearly defined standards. In other words, Congress may not abdicate its legislative function by transferring it to the executive branch of the Government and, within the permissible area of such delegation of legislative authority, it must be exercised within limits and in accordance with standards which serve as a definite guide for the Administrative Authority.

In this instance, the Committee was directed "to investigate conditions in the textile industry". What conditions? The Act states (Sec. 2 (b)) that—

"It is hereby declared to be the policy of this Act, through the exercise by Congress of its power to regulate commerce among the several states, to correct and as

rapidly as possible to eliminate the conditions above referred to in such industries *without substantially curtailing employment or earning power.*" (Italics supplied.)

While it was established by the testimony adduced at the hearing and was, indeed, before this a matter of common knowledge that, generally speaking, the textile industry is a "sick industry"; the question of the possible effect of any given wage order upon earnings as such was not considered by the Committee. Other and similar failures of the Committee to take into account factors intended by Congress and required by the Act to be taken into account will be discussed in another part of this statement. The contention here advanced—and illustrated by the foregoing reference—is that the direction to the Committee "to investigate conditions in the textile industry", as supplemented by the rules and regulations issued under the Act for the guidance of Industry Committees, established no sufficient standards for the guidance of the Committee in its studies and deliberations.

While an industry committee cannot itself establish or finally promulgate a wage order, nevertheless such orders may become effective only upon the committee's recommendation—i. e., when the Administrator approves a recommendation, after a hearing, and after taking into account the same factors required to be considered by the Committee. Consequently, the role of the Industry Committees as fact-finding agencies is an important one and their duties and procedures should be defined with sufficient definiteness to enable them to discharge their functions as contemplated by the Act.

3. The Majority of Industry Committee No. 1, in arriving at its recommendations failed to take into account factors required by the Act to be taken into account in making a recommendation for a wage order.

The failure of the Administrator to establish sufficient standards for the guidance of the Committee was commented upon in the preceding paragraph. It is arguable that such failures or omissions might have been cured if the Committee had in fact considered and taken into account all of the factors required by the Act to be taken into account. That this was not done, however, appears from even the most cursory examination of the Act and the Record:

(a) The Act is based upon an alleged finding by Congres of the "the existence, in industries engaged in commerce or in the production of goods for commerce, of labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers. . . ."

The adequacy of any given wage to support a decent standard of living is dependent upon what it will buy. WPA, American Federation of Labor, and Industrial Conference Board statistics were introduced in an effort to establish that, while living standards were lower in the cotton-growing states, living costs were not—or at least not appreciably so. Aside from the circumstance that this conclusion and these figures are contrary to the demonstrable fact that expenditures for food, shelter, fuel, and clothing normally are less in any warm climate than in a cold one, no investigation was made of the benefits provided free or at cost by southern mills for their workers, or of the size of the mills or of the average mill town of the south. The Minority feel that this question of living costs in the different regions is one that should receive careful study by an unbiased agency of government which is not under the compulsion of establishing a case for large relief appropriations from Congress.

(b) In the same connection, no investigation was made of annual as distinguished from hourly earnings in the North and South. Obviously, 35 cents an hour with year-round employment is conductive to greater security and a higher standard of living than 60 cents an hour for four or five months out of the year. Nevertheless, this question, which is vital to any proper understanding of living conditions, was not touched upon by the committee.

(c) The failure of the committee to explore the possible effect of any given minimum wage upon *earnings*— a subject specifically mentioned in the policy declaration of the Act—has been commented upon.

(d) Section 8 (b) of the Act provides (in part):

". . . The Committee shall recommend to the Administrator the highest minimum wage rates for the industry which it determines, *having due regard to economic and competitive* conditions, will not substantially curtail employment in the industry." (Italics supplied.)

That language appears to be clear enough. It mandatorily requires that the committee, before arriving at a recommendation for a wage order, shall give due regard to *economic* and *competitive* conditions and shall determine, in the light of these, that the minimum wage recommended, if approved, will not substantially curtail employment.

Among the "economic" or "competitive" conditions or factors not considered by the committee, or given wholly inadequate consideration, may be mentioned—

Freight rates;

Taxation;

The economic consequences, in terms of increased purchasing power, of any given minimum wage recommendation;

The effect of Reciprocal Trade Treaties;

The probable effect of the pending Cotton Export Subsidy;

The effect of Government cotton loans on prices and the relationship of these artificial controls to the problems of the increasing use of substitutes and foreign competition.

Discussing these in the above-named order, a brief memorandum on "Competitive conditions as affected by transportation costs in the Cotton Textile Industry" was prepared by the Economic Section of the Wage-Hour Division, but it was not considered by the committee. Similarly, such testimony as was received on this subject was regarded by the committee—and properly so—as inadequate to enable the committee to arrive at any conclusions.

No pretense is made that, in the time and with the facilities and resources available, the Minority has been able to explore the question of competitive transportation costs with any degree of throughness or finality. Indeed, no obligation rests upon the Minority of this committee or other interested parties to *prove that southern textile manufacturers are operating under a competitive disadvantage by reason of a discriminatory freight rate situation.* It is the function of the committee, under the law, to investigate *all important competitive factors and to determine from the facts whether, as between different geographical regions, or different elements within or in competition with the industry, a competitive disadvantage exists and, if so, the effect of the recommended minimum wage upon such situation.*

The information on comparative transportation costs [1] which follows is therefore intended merely to establish that, as between the North and South, a competitive situation exists which, under the Act, the Committee should have taken into consideration. This data [2] prepared by Carl R. Cunningham, Manager, Traffic Department, representing Associated Southern Mills, North Carolina Cotton Manufacturers Association, Inc., and the Cotton Manufacturers Association of South Carolina, shows:

1. That the transportation cost, in cents per 100 pounds, via routes over which the lowest rates are available to the largest consuming market, New York City, from 50 representative origins in all sections of the Southern States, and from 50 representative origins in all sections of the New England States, *averages approximately one-half cent per pound, or 51 cents per 100 pounds, higher from the South than from New England and the East.*

2. That the transportation cost, via standard all-rail and rail and water routes, from Boston and Philadelphia, representative origin mill points in the Eastern and New England mill territory, and from Charlotte and Atlanta, representative origins in the Southern territory, to the 25 largest cities in the United States, averages (a) *via standard all rail routes, 16 cents per 100 pounds higher from the South than from New England and the East; and (b) via routes over which the lowest rates are available, 27 cents per 100 pounds higher from the South than from New England and the East.*

3. That the transportation cost, via standard all rail routes, from Atlanta, the recognized base group in Southern mill territory, and from Boston, the recognized base

[1] In cents per 100 pounds on finished cotton fabrics in original piece.
[2] The complete statement prepared by Mr. Cunningham, of which the following is only a summary, is attached hereto.

group point in New England mill territory, to the 30 largest cities East of the Mississippi River, is *14 cents per 100 pounds higher from Atlanta than from Boston.*

The foregoing information is intended merely to illustrate a single aspect of an extremely complicated problem. However, the Minority respectfully submit that in wholly neglecting to investigate or take into account this vital matter of discriminatory transportation costs, the committee failed to comply with the requirements of the Act and for this reason, among others herein discussed, the Majority's recommendation was not made in accordance with law.

The language of Sec. 8 (b) of the Act, " * * * *having due regard to economic and competitive conditions,* will not substantially curtail employment" clearly indicates a recognition by Congress that only by a careful consideration of *all* relevant economic and competitive conditions can it be determined whether a given wage order is likely substantially to curtail employment. The failure of the committee to delve into the freight rate situation has been noted. Another important competitive factor virtually ignored by the committee is that of the comparative tax burden under which the textile industry operates in the various sections and localities.

Frequent reference was made in the course of the committee hearings to those instances—believed to be relatively insignificant in number—of exemption of plants from local taxation by Southern communities seeking to entice industry away from other regions. No effort was made to ascertain the extent of this particular practice or—what is of vastly more importance—to weigh, as a competitive factor, the aggregate tax burden existing in the various regions in which the industry is carried on.

Taxes are a part of the inescapable cost of production. The tax bill must be included in the price of every piece of goods sold. So far as the Minority is aware, reliable information has never been assembled as to this element of the cost of doing business in the different regions in which the textile industry is located. The opinion seemed to be held by certain witnesses that taxes are lower in the South than in the North. Perhaps so. The point here made is that this is an economic or competitive factor which should have received the attention of the Committee.

It was asserted over and over again, however,—especially by the proponents of a 40 cent minimum hourly wage—that such an increase in wages would increase consumer purchasing power by an amount sufficient not only to compensate for the higher prices which would result from such increase, but by an additional margin sufficient to "stabilize" this sick industry and put it on its feet. This contention will be examined in detail in another part of this statement, but it is desired to point out here that, from first to last in its deliberations, the Committee made not the slightest effort to appraise or determine the economic consequences of any given minimum wage, including the one recommended, in terms of increased consumer buying power.

It should be recalled in this connection that, in a very real sense, the Industry Committee is the agency which must find and weigh the facts upon which a wage order is based. The Administrator cannot make a wage order except upon the recommendation of the Committee. It consequently follows, that while the Administrator may disapprove an ill-founded recommendation, he cannot cure errors, failures, and omissions by himself investigating conditions which, under the law, the Committee must consider as a basis for its recommendation.

By what amount would a uniform 32½ cent minimum hourly wage increase effective consumer buying power?

How many consumers would benefit from such increase and for what would they be likely to spend their money? For gas and oil? Or a new shirt or cotton dress?

What would be the *net* effect upon consumer buying power? The farmers—to whom the law does not apply at all—are among the largest consumers of cheap cotton textile products. Obviously, any increase in price would diminish their purchasing power. Would this off-set to an appreciable extent any gains in purchasing power among the textile and other employee groups benefiting from the provisions of the Act?

These and other related questions—believed by the Minority to go to the heart of the whole matter of the probable effect of wage increases upon consumer buying power—are left unanswered by the Committee. And it is respectfully submitted that, until those questions are answered in the light of a reasonable investigation and finding of facts, there is no basis whatever for the Majority's assumption that if its recommendation is approved, substantial curtailment of employment will not in fact result.

It is repeated again—because the Minority feel that it cannot be emphasized too strongly—that the function of the Industry Committee is that of *affirmatively establishing,* after reasonable investigation of all relevant economic and competitive conditions, that a wage recommendation higher than the statutory minimum *will not substantially curtail employment.* The function of the Committee is not to guess, or to hope, or to make recommendations based in part upon the failure of some other group to establish that such recommendation, if approved, will produce substantial unemployment. Its findings cannot rest

upon default. They must be affirmative, complete, and based upon authenticated factual information.

The same general comment might be made with reference to the Committee's failure to make any adequate study of the probable long-range effects upon the Textile Industry of the Reciprocal Tariff Program, or to appraise the probable effect of the pending Export Subsidy Program in respect to raw cotton. Clearly the latter has an obvious and vital bearing upon the foreign competitive position of the Textile Industry as a whole, but it was not discussed or considered by the Committee. The same treatment was accorded those problems growing out of the Government's cotton-loan program. There is demonstrably a direct casual relationship between the increasing use of substitutes and these artificial price controls, but it was virtually ignored by the Committee.

(e) The Act states [Sec. 8 (c)] that "no classification shall be made, and no minimum wage rate shall be fixed, *solely* on a regional basis, and the Administrator shall consider *among other relevant factors* the following:

(1) Competitive conditions as affected by transportation, living, and production costs;

(2) The wages established for work of like or comparable character by collective labor agreements negotiated between employers and employees by representatives of their own choosing; and

(3) The wages paid for work of like or comparable characted by employers who voluntarily maintain minimum-wage standards in the industry" (Italics supplied).

What is the meaning of this language? The Majority correctly assume that regional differentials as such are

prohibited by the terms of the Act, but did it go further than this and fail to give adequate consideration to the possible desirability of a regional differential based not *solely* upon a regional basis, *but also upon other competitive factors*, some of which are enumerated above? The Minority believes that it did and that it thereby failed to give effect to a clearly implied purpose of Congress that, if necessary to avoid substantial dislocations in employment, such differentials should be established.

(f) As will be seen, the chief impact of the proposed 32½-cent minimum rate would be upon the Southern sector of the industry. Evidence was offered tending to establish (without taking into account various factors, such as discriminatory freight rates) that a wage differential of from 6 to 8 cents per hour now exists in favor of the South. And it was a primary endeavor of certain witnesses to establish that the "equalization" of this assumed differential should be a basic objective of any wage order.

Is this a permissible objective under the terms of this or any other Federal law? Ours is a system of delegated powers. The South has struggled for 75 years against various obstacles consciously erected to hinder and retard its industrial and commercial development. Chiefly as a result of these factors, it has recently been described as the "Nation's Economic Problem No. 1." The practical effect of this proposed minimum will be further to penalize this section in the interest of other and more favored sections. This question may have to be determined in another forum, but is there any constitutional authority under which, whether intentionally or not, Congress or an Administrative agency operating under a law passed by Congress, may penalize one section for the continued economize aggrandizement of another? The Minority doubts that such constitutional authority exists

and respectfully submits that the purpose of this Act is to place such reasonable floor under wages and ceiling over hours as will not result in a substantial curtailment of employment. More specifically, *its purpose is not to perpetuate the punitive program of the carpet baggers under the guise of "equalizing" existing competitive conditions as such.*

To summarize this statement up to this point:

The Committee is not constituted in accordance with law;

Administrative Order No. 1 provides no sufficient standards for the guidance of the Committee;

The majority of the Committee, in arriving at its recommendation, failed to take into account factors required by the Act to be considered in making a wage order, including among others—

Living costs;

Annual earnings;

Freight rates;

Taxes;

Effect of any given wage order upon consumer purchasing power.

Effect of Reciprocal Trade Treaties;

Effect of a Cotton Export Subsidy;

Effect of Government cotton loans on prices and the relationship of these artificial controls to the problems of the increasing use of substitutes and foreign competition.

It has also been noted that the question of the possible advisability of regional differentials based upon economic and competitive factors was not fully considered and that the "equalization" of existing competitive conditions, as between different sections, is not a permissible objective of the Act.

For the foregoing reasons, the Minority respectfully submit that the recommendation of the Majority was not made in accordance with law and hereby request that such recommendation be disapproved.

B. *The Recommendation of the Majority is not sustained by the evidence adduced by the Committee or considered by it.*

In weighing the probative value of the information and testimony upon which the Majority based its recommendation, three general principles should be kept in mind:

(1) As has been previously stated, the burden is upon the Committee to establish, having due regard for all relevant economic and competitive conditions, that a recommended minimum wage will not substantially curtail employment in the industry. Such finding must be based upon the greater weight of the evidence and upon an investigation of *all* the relevant economic and competitive factors.

(2) The probative value of opinion—of which there is much in the Record—is necessarily dependent upon the knowledge of the witness of the matter in respect to which his opinion is given. Thus, the opinion of a labor leader

as to the merits of a jurisdictional dispute would be entitled to more weight than that of a mill superintendent while, conversely, the mill executive might reasonably be expected to be better informed about markets or manufacturing costs, for example, than a labor leader would be.

(3) At the same time, the interests of the witnesses must be kept in mind and an effort made to sift fact from prejudice or economic predilection.

Measured by the foregoing standards, does the information and evidence adduced by the Committee and considered by it sustain the Majority recommendation?

The most pertinent and authoritative source of information made available to the Committee was the report on *Wages in Cotton Goods Manufacturing* Bulletin No. 663), prepared by Mr. A. F. Hinrichs, Chief Economist for the Bureau of Labor Statistics. This report deals with certain aspects of the economic background of the textile industry and undertakes to provide an analysis of the wage data as they bear upon the problem of wage determination. It does not embrace—or purport to embrace—all of the factors required to be taken into account by the Committee and notably omits any satisfactory discussion of real wages, the effect of any given minimum upon the higher wage brackets, annual earnings, competition between cotton goods and paper, and the problems incident to the raising of capital for modernization purposes.

Bearing upon the economic position and outlook of the textile industry at the present time, however, Mr. Hinrichs states:

"The cotton goods industry, like other textile industries, is highly competitive * * * The intensity of competition

in the largest branches of the cotton goods industry is indicated by all available information." [3]

"The problem of earning a return on competitive capital investment takes on an entirely different aspect under conditions of expanding and static demand. Throughout the 19th century there had been an almost continuous expansion of the plant capacity of the industry, both in New England and the cotton-growing states. * * * *There has been no expansion of the aggregate consumption of cotton over the last 15 years* (italics supplied) * * * These figures (table 11) seem to indicate a stabilization of demand, rather than a contraction, in which the market for cotton goods—aside from year to year fluctuations—is highly dependent upon the size of the national income * * * *The total spindles in place in the United States have decreased from about 38 million for the United States as a whole in 1925 to about 26 million at the present time.*" [1] (Italics supplied.)

"Various (technological) factors have contributed to decrease the number of spindle hours required to process a bale of cotton from 15,300 in 1922-23 to a low point of 12,700 in 1936-37. *** * Spindles, when used today, are used more hours per year than was formerly the case. The search for economy has not overlooked the opportunity to spread a fixed annual overhead cost for taxes, insurance, depreciation, and even to some extent of management over more hours of machine operation in the year. [2]

" * * * The industry is operating under bitter pressure that retards new investment and tends to drive old investment out of the cotton-textile industry by the bankruptcy route * * * It is apparent from the ability of a

[3] P. 14.15.
[1] P. 16, et seq.
[2] P. 23-24.

number of companies to realize net profits on sales that under efficient management and without the burden of idle equipment the industry as a whole would show considerably larger returns on net textile investment.[3]

"As regards the importance of labor costs—the item which will be most affected by a minimum wage * * * From January 1933 to June 1936 the percentage of labor costs to total manufacturing costs ranged from 21.5 to 23.8 in weaving mills, from 23.8 to 27.3 percent in spinning mills, and from 27.1 to 29.2 percent in combined spinning and weaving mills[1] * * * For spinning and weaving mills as a whole, labor cost was about 29 percent of the total manufacturing cost, ranging from somewhat less than 25 percent on medium yarn count cloth to 40 percent on fine goods. Any change in wage rates will more seriously affect manufacturing costs in those instances where labor costs are large. In this connection it should be borne in mind that, in precisely those cases where labor costs are a large proportion of manufacturing costs, wages tend to be above minimum levels, and fewer employees would be affected by the establishment of a minimum wage. Under conditions of competition such as exist in cotton textile manufacturing, high-cost mills have tended to go out of existence * * * Inefficiency has been able to survive only as it was able to operate at unusually low wages * * * Efficiency is a relative term; a mill that was efficient in 1920 will be relatively inefficient in 1938 if it has not modernized its equipment. *Leadership in efficiency by a mill or a region can only be maintained as new investment is continuously made. With the general unattractiveness of the cotton textile in-*

[3] P. 31, 33; table 19 shows average annual rate of return for spinning and weaving companies 2.7%.

[1] "Labor costs are today estimated to be, on an average, about 36 percent of total manufacturing costs." From memorandum by Economic Section, Wage & Hour Division, p. 10.

dustry to outside capital, this means essentially that efficiency is maintained through the reinvestment of adequate reserves for depreciation and that expansion must be financed from profits (italics supplied). The lowest wages are perhaps more frequently associated with equipment which would, of necessity, be junked in a fully competitive labor market * * * The existence of such operations is one of the factors which Industry Committee No. 1 will wish to consider.[4]

"While there is no data on profits of the cotton textile industry at the present time (Nov. 1938), changing mill margins trace the changing fortunes of the industry quite closely[1] * * * It has been lower in recent months than it has been over any extended period since 1933[2] * * * *The present margins so far as statistical evidence goes, appear to be close to the costs of the most efficient producers* (italics supplied) * * * The evidence seems to indicate that any substantial increase of costs will result in corresponding increases in selling prices[2]."

"At least two-fifths of the spindles in place are nearly 30 years old and have been rendered obsolete[3] * * * *In general, an equalization of wage scales will necessitate modernization of the more obsolete mills,* or will result in a transference of business to higher-wage mills that are now partially idle because of competition from low-wage mills (italics supplied).

"The increase in the national average output per man-hour in the past ten years has been remarkable * * * For the period 1928 to 1936 as a whole, the increase

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[4] P. 34-35.
[1] P. 37. Table 24, showing cotton and print cloth prices and mill margins from 1923-38 reveal an almost steady decline from 24.71 for the last month of 1936 to 13.55 for September, 1938.
[2] P. 142.
[3] P. 52.

amounted to 49 percent * * * The cotton-goods industry has given substantial evidence of its capacity to assimilate rising wages without increased labor-cost. The essential problem is one of the rate at which adjustments are made —a problem that arises out of the fact that a wage rate increase at the moment that it is made usually involves an increase of labor costs, while output per man-hour rises gradually. [4]

"Any substantial increase in the price of cotton goods will tend to affect both foreign trade and the domestic market * * * The industry is primarily dependent upon the domestic market. [1]

"It is estimated that 40 percent of the cotton consumed in the United States is for wearing apparel, 40 percent for industrial and agricultural purposes, and 20 percent for household use. In certain industrial uses, cotton competes with paper, jute, and other low-priced materials. *Increases in the price of cotton or cost of manufacture may force cotton out of a competitive position with these materials* (italics supplied) * * * The fact that there is such a high degree of competition between cotton and other materials in the low-order uses shows the necessity of maintaining a balance between the cost of cotton goods and of competing products if shifts away from cotton goods are to be avoided. * * * The most important factor contributing to such elasticity as is found in cotton textiles may be the possibilities for substitution. *The data presently available are insufficient for this Bureau to appraise the competitive relationships of paper products and cotton goods, for example* (italics supplied) * * * One may still wash in the brook and dry one's hands in the grass after a picnic, though paper napkins are now com-

[4] Pp. 47, 54.
[1] P. 143.

monly strewn over the country-side * * * The development of paper towels, napkins, handkerchiefs, bags, and gummed tape are all evidence, in part, of successful competition with cotton * * * *As regards household furnishings and apparel, there are insufficient data to warrant this Bureau drawing any conclusion as to the influence of price on consumption*[2] (italics supplied) * * * There is ample evidence to indicate that the American market is not adequately supplied with cotton goods * * * On the basis of such data as are now available, it appears that the most important single factor in determining cotton textile consumption for apparel and household furnishings is the amount of income of low-income groups."

"Average hourly earnings in August 1938 (of 319,000 employees) in 784 establishments in the cotton-goods industry were 38.35 cents * * * As of August 1938, there was an 8-cent difference between the average hourly earnings of Northern and Southern cotton mills, or 18 percent * * * In the interpretation of this difference, it is important to bear two points in mind: First, *the figures are* averages for all mills reporting (italics supplied); second, a small part of the difference is due to the types of mill in the two regions * * * The yarn division of the industry, which averages less than the industry as a whole, partly because of the occupational composition of the mills, is primarily concentrated in the South. In the sample presented, out of 48,878 workers in spinning mills, 41,601 were in the South. On the other hand, specialized weaving mills which average higher hourly earnings than in the industry as a whole, reported the same number of employees in the North and in the South. The regional difference in hourly earnings in mills that do both spinning and weaving amounted to about 6.9 cents as compared with the difference of 8 cents for the industry as a whole * * * Earnings in the cotton textile industry

[2] Pp. 60, 61, 62, 143.

in the North are lower than in many other Northern industries, even for similar types of skill * * * Southern cotton wages are low relative to Northern cotton wages. But it does not follow from this that wages in the Southern branch of the cotton textile industry are also low relative to prevailing wages in other Southern industry. * * * *The cotton textile industry in the South occupies a more intermediate position in the general wage economy than in the North * * * Cotton textile incomes are substantially higher in the South than farm incomes in that area*[1] (italics supplied).

"About one-tenth of the workers in the industry were affected by the 25-cent minimum wage. Virtually all of these workers were in Southern mills * * * A minimum wage of 30 cents for all workers will affect comparatively few workers in Northern mills and does not appear to involve any general change of wage scales for workers in occupations paid more than the minimum. *In Southern mills averagig 37.5 or more* the mere increase to 30 cents of workers receiving less than 30 cents an hour would not involve an increase of as much as one-half cent in average hourly earnings for all workers. On the other hand, *if such mills should attempt to maintain existing wage differentials between laborers and sweepers and groups of workers now receiving 30 cents or more, they will face an increase of 5 cents or more in average hourly earnings. Among Southern mills averaging less than 30 cents, even disregarding the existence of two separate wage scales at minimum levels, a 30 cent minimum will raise plant averages by about 4.7 cents*" (italics supplied).

In conclusion, Mr. Hinrichs states (in part):

" * * * The competitive character of the industry assures that within comparatively brief period of time

[1] Chapter 9.

the benefits of technological advance are passed on to consumers or workers, or both. *There is no exorbitant profit margin to indicate exploitation of the consumers or workers* (italics supplied). The main question has been whether the benefits of technological progress were to accrue to the wage earners in the form of higher wages or to consumers in the form of lower prices. The Congress decided that workers should be benefited at least to the extent of ultimately receiving a wage of 40 cents, when such wage is possible without substantially curtailing employment * * * There seems to be little question that such a wage can be ultimately achieved. The main problems are *problems of Timing.* (Italics supplied). It is one thing to say that consumers have benefited disproportionately by the technical advances of the last ten years; it is another to deduce from this the conclusion that substantial increases of cost can be made immediately without some decrease of consumption. It is one thing to acknowledge that a certain number of obsolete mills are bound eventually to be displaced, unless they are modernized; it is another thing to decide that they should all be displaced immediately.

In his subsequent testimony given in explanation of the Report, Mr. Hinrichs emphasized—

The low rate of earnings on capital invested, from which it was reiterated "that it cannot be assumed that increases in costs will not be reflected in higher prices";

That "the maintenance of obsolete equipment has been possible within the industry, purely because of the fact that it was possible to find in some localities relatively low wages so that the lower efficiency of the equipment of the workers was compensated from the manufacturer's point of view in terms of the lower wages being paid";

That larger quantities of cotton goods can be moved at low prices than at high;

That, *"obviously the amount of wages which are spent by cotton textile workers, as such, on cotton textiles is a comparatively small part of their total income* (italics supplied);

That (in his opinion) a 40-cent minimum wage would have "a very substantial effect upon the demand, not only for cotton products, but for other products as well, sufficiently large so that it would be a big part—a permanent influence on the market";

That there is no information available as to what effect a 30-, 35-, 40-cent minimum would have upon the wages of the higher skilled groups (italics supplied);

That the cost of living—in terms of the prices of food, clothing, shelter, etc.—does not vary greatly as between the North and South, or as between large and small communities;

That "this discussion has nothing whatever to do with family income; * * * the differences in family income between communities may be very substantial"; and

That, anyway, "the kind of living which this income ($832) will buy in the small cities of the South does not seem to warrant lower wage rates in that area to take account of any differential which may exist between living costs in the North and South".

Not included in Bulletin No. 663, but introduced in connection with it, as related information, is the data, including a memorandum on "The possible effects of different minima on labor costs, manufacturing costs, and

prices" prepared by Mr. Daugherty, of the Economic Section of the Wage-Hour Division, and his associates, on the relationship of labor costs to retail prices to the consumer.

According to Mr. Daugherty, labor costs are about 36 percent of total manufacturing costs.[1]

A 32½-cent minimum would increase labor costs *for the industry as a whole* approximately 4 percent and manufacturing costs 1.4 percent.[2]

The record becomes unintelligible at this point (top of page 39, vol. 1 of Hearings), but it appears that in computing the increase in the final price of finished goods to the consumer, increases in certain processes subsequent to the first may have been omitted. In any event, Mr. Daugherty concludes that in the case of an article such as men's shorts, a 20 percent increase in wages at the mill would result in an increase in the price of the finished article, as it reaches the consumer, of approximately 3.9 per cent. It was his belief that prices for this type of wearing apparel are rather rigid and that it would require in the neighborhood of a 10 percent increase to cause the retailer to change his classification. Consequently, he concludes, any final price increase likely to result from a minimum wage within the power of the Committee to recommend would not be passed on to the consumer, but would be more likely to be "taken out of the tail of the shirt". This thought is repeated in the memorandum by the Economic Section of the Wage and Hour Division: " * * * No minimum wage order would appear to have drastic effects *upon the industry as a whole* or on the consumers of cotton-textile products (italics supplied).

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[1] Pp. 10-11 Memorandum; See p. ..... Ante, for Mr. Hinrichs' figures as to effect of 30-cent minimum on Southern wage structure.

[2] Bulletin No. 663, Page 147.

The information made available to the Committee by Messrs. Hinrichs and Daugherty speaks for itself. All of it is interesting and most of it is pertinent to the subject under consideration, but it is respectfully submitted that, for the purposes of this Act, the information made available to the Committee was wholly inadequate to enable it to reach a legally defensible determination.

It is recognized that it is not the function of the Bureau of Labor Statistics or of the Economic Section of the Wage-Hour Division to draw administrative conclusions from the data submitted. On the other hand, the Committee should have been provided by these or by some other agency of the government with the raw materials—in the form of reasonably complete statistical data—out of which an administrative determination might be fashioned. The Committee's task was to arrive at a minimum wage recommendation which, with due regard to the relevant economic and competitive factors, would not substantially curtail employment. In the light of this—and in view of the fact that the impact of any wage increase would be felt most by mills—many of which are nearly obsolete—in the South—what should the committee make of Mr. Daugherty's figures on the effect, *upon the industry as a whole*, of various wage minima?

The law requires that the Industry Committee shall not recommend, or the Administrator approve, a wage order which will substantially curtail employment. Obviously, the test here is not only that of the effect of a 32½-cent (or any other minimum) upon the industry as a whole or upon spinning or weaving or integrated mills as such, but also upon those small and marginal establishments, wherever located and of whatever nature, which are most likely to prove unable to carry on under the added burden. And the only way in which it could possibly be determined whether, for example, those nearly obso-

lete spindles, estimated by Mr. Hinrichs to comprise two-fifths of the total, would be put out of business by the proposed 32½-cent minimum would be to make a survey of their present financial condition and prospects, whether a modernization program could be generally carried out, and, if not, how many jobs would be lost.

This information was not made available to the Committee, nor did the Committee make any effort to obtain it.

In this same connection, Mr. Hinrichs stated that "an equalization of the wage scale will necessitate modernization of the more obsolete mills, *or will result in the transference of business to higher-wage mills that are now partially idle because of competition from low-wage mills.* (Italics supplied.) In other words, the conclusion implied is that no net unemployment would result from the closing up and dismantling of the more obsolete mills.

Is this a well-founded conclusion? The Minority do not agree that it is. In the first place, the payroll of these small and marginal mills is the economic life-blood of many small communities. It is hardly likely that Congress intended that a definition of "Substantial unemployment" should be adopted which would not treat unemployment as real because it happened to be local. The Minority specifically contend and hereby take the position that any wage order which will close and put out of business a substantial number of mills will thereby substantially curtail employment within the meaning of the Act, even though there may be some interference of business to the more modern and lower-cost establishments.

But this is not the only sense in which the closing of these mills would substantially curtail employment. *Ag-*

gregate net employment would be curtailed, to the extent that a "Transference of business" should result, it would go to the more modern mills in which higher machine output requires fewer man-hours. Did Congress intend that this Act should be administered so as unduly to accelerate the existing trend towards the further displacement of men by machines? Or to promote monopoly and the further concentration of business in the large centers at the expense of small enterprise and small communities? The Minority do not think that it did.

Mr. Hinrichs spoke of the difference between "making existing records sing a new song and getting a new basic record". It appears to the Minority that, of all the statistical songs presented for the enlightenment of the Committee, none touched upon what is probably the crux of this whole matter. Indeed, *until the committee knows, from a complete and thorough investigation, what will be the probable effect upon the small and marginal mills of further and drastically increasing labor costs, general information as to certain other effects of such increase upon the industry as a whole appears somewhat academic.* That Mr. Hinrichs himself experienced some misgivings on this particular score is perhaps indicated by the following statement made by him:

"It is one thing to acknowledge that a certain number of obsolete mills are bound eventually to be displaced, unless they are modernized; it is another thing to decide that they should all be displaced immediately." [1]

Of the other testimony received by the Committee, most of it was presented by organizations and individuals representing employers and employees. In order to understand this evidence and fairly appraise its probative

[1] As of August, 1938.

value, it is necessary to examine the testimony of each witness in some detail. In the interests of brevity, however, an effort will be made to summarize only the conclusions of the witnesses and the principal reasons or data submitted in support of such conclusions.

The first group to be heard on behalf of the employers was the Cotton Textile Institute, headed by Dr. C. T. Murchison, and representing "70 percent of the cotton textile regions of the industry; the American Manufacturers Association, which includes the Southern division of the textile industry; the National Cotton Manufacturers Association, which is the more Eastern division; the National Rayon Weavers Association, which is national in scope; and the National Federation of Textiles, which includes the greater part of the silk weaving industry".

By brief filed with the Committee and in his testimony, Dr. Murchison offered evidence tending to establish—

That the cotton textile industry, here and in other countries, is an industry of chronic adversities.

That, among the factors responsible for the instability and poor earning record of the cotton textile industry, were the increasing use of substitutes, notably rayon, jute, hemp, linen, and sisal and non-textile products like paper, leather, and rubber; changes in consumer spending; increased importance of fashion changes; and changes in bargaining strength. Bureau of Internal Revenue figures submitted reveal that in the period 1926-35, the cotton textile industry had only four profitable years—1927, '28, '29, and '33. Moreover, "the effect of the textile depression on the * * * silk and rayon weaving industry was as great as on the cotton textile industry"

* * * In the Northern section of the silk and rayon industry, during the period 1921-29, slightly more than 1000 firms went out of business and more than 1200 firms entered * * * In no year since 1929 has the number of (silk and rayon) mills reporting net income been in excess of 40 percent of the total.

That the high degree of mechanization of most textile processes has reduced the importance of skilled labor in the textile industries, as compared with such high-wage industries as iron, steel, and metal fabricating. However, measured by the ratio of wages to value of product or wages to value added, the textile industries rank high among the industries whose labor costs constitute a high percentage of total costs.

That the fixing of a 32½-cent minimum wage would require 1.3 cents to more than 20 cents, or from 4.2 percent to over 160 percent for more than 129,000 employees. Such increases would affect 44.2 percent, or 124,447, of the workers employed in the South and more than 6 percent, or 4,656, of the workers in the North.

That no information is available which would enable anyone accurately to appraise the effect of any given new minimum upon the entire wage structure. However, on the basis of such information as is available, a 32½-cent minimum would require more than 80 percent of the Southern mills to increase wages from 0.8 percent to more than 116.7 percent.[1] The same minimum would require 16.5 percent of Northern mills to increase wages ranging from 3.4 percent to more than 39.4 percent.[1]

[1] The average ratio of raw cotton prices to finished goods prices is that of 1 to 3-4; in the case of surgical bandages it is approximately 1 to 100.

That even a small upward adjustment of wage rates would immediately increase production costs for some mills and a substantial increase would affect all mills. Such increases could not be met out of profits—which are largely non-existent. The present position of the industry provides no assurance that prices are likely to rise in the near future, thereby providing a wider spread between costs and selling prices. Moreover, "unless general economic recovery proceeds at a more rapid rate than we are now (January, 1939) experiencing, general purchasing power will not be adequate to absorb higher priced textiles". An increase in wage rates at this time will not enhance the ability of American mills to meet a growing volume of foreign competition. Such an increase is also likely to accelerate the process of modernization, putting high-cost mills out of business and resulting in extensive unemployment which will not be compensated for by an increase in employment in the more efficient mills. "The tragedy of the withdrawal of these mills from the industry arises from the fact that in the majority of instances these mills, whether they be cotton, rayon, or silk, are located in isolated communities that have no alternative sources of employment. In the cotton-textile industry, for example, more than one-half of the mills, employing 200,000 workers, are located in communities of less than 5,000 population."

That "these industries are less able today to adjust themselves to a substantial increase in costs than they were five years ago under N.R.A. The period that marked the legislative debate leading to the enactment of the N. I. R. A., and the time that transpired before the codes become effective were characterized by a sharp, though temporary spurt in activity and prices in all business lines. The pronounced upward trend in farm prices and in commodities generally increased purchasing power and 'cushioned' the impact of higher prices. The inauguration

of the President's Reemployment Agreement and the rapid codification of almost all industries, both inter- and intrastate, tended to keep wage costs in various industries in line with each other. *Furthermore, the textile code placed a limitation on machine hours* and the N. I. R. A. provided machinery for increased protection from foreign competition * * * *The favorable forces that accompanied the inauguration of the N. R. A. are absent today".* (Italics supplied.)

In conclusion, Dr. Murchison indicated his belief that any considerable increase in the burden under which the cotton textile industry is operating at the present time will substantially curtail employment. "Wisdom", he said, "dictates that the objectives of the Act be approached slowly and cautiously".

A supplemental brief was presented to Sub-Committee "D" of Industry Committee No. 1 by the American Cotton Manufacturers Association representing the Southern Sector (comprising 80 percent of the total) of the cotton textile industry. This brief was not filed until March 1, but it and other information received by the Sub-Committee are summarized here in the interests of presenting all of the testimony of the Employer Group under a single heading. The brief was presented by Mr. W. M. McLaurine, Secretary and Treasurer of the Association, who stated (in part):

That—with reference to the effect of the 25-cent minimum wage—the time that has elapsed since October 1938 does not represent a sufficient time to estimate the effect of increased wages * * * However, the industry has been going through a very trying period since October and the information which is becoming available indicates a decrease in employment * * * The price of cotton goods has decreased during that period. The volume of

cotton goods sales has not equalled production during this period. The number of cotton spindles in place has decreased during the four-month period ending January by 307,000 spindles * * * Last year for the first time the number of spindles in place in the cotton producing states has shown a decrease. Some of the older mills have found it impossible to compete on a 25-cent minimum. More mills will be dismantled as the wage rate increases.

That the same number of pounds of cotton yarn can be produced in a modern cotton mill by 80% of the spindles and 70% of the employees that is now being produced in a mill of which the average age is 20 years * * * A radical change in the wage scale will unduly accelerate modernization and substantially reduce the number of employees required to manufacture the same quantity of cotton into cotton goods * * * The cost of modernizing a cotton mill is substantial and many of the mills now operating in the South are not in a position to meet such capital outlay. This means that the marginal mills will go out of business, the poorly financed mills would be handicapped, and only the stronger mills could meet the requirements.

That the period from October through January has shown a marked decrease in the mill margin.

That the experience of the industry under NRA provides no assurance whatever that substantial increases in wage rates can be absorbed at this time. Economic conditions were widely different and the sentiment and outlook more favorable in 1933 than in 1938-9. Moreover, the textile industry never proved its ability to support the NRA wage structure after the first constructive effects of that legislation were spent.

That the competitive condition of the cotton textile industry has been adversely affected on account of the great inroads that paper has made in competition with certain cotton fibers, the increased use of rayon, the reciprocal trade agreement with Great Britain, Canada, and other countries, and the importation of flax, jute, and other fibers.

That the 25-cent minimum wage has increased the price of wood pulp per cord to such an extent that wood pulp may be imported from foreign countries, "and we are advised that when the minimum rate goes to 30 cents there will be an increasing danger of the importation of foreign wood pulp. *We beg to submit to the Committee that the threat of importation of foreign material and the corresponding decrease in employment in the United States will make it practically impossible for any industry committee to consider a higher wage for the paper and wood pulp industry than the 30 cents which Congress has fixed to be effective in October 1939 * * * Any change in the minimum wage of the textile industry that does not, at substantially the same time, affect labor of similar skill and opportunity should not be adopted*". (Italics supplied.)

In conclusion, Mr. McLaurine stated the position of the Association:

"We submit that we have been unable to find any evidence that would justify the Committee in ordering an increase in the minimum wage that could not be quickly refuted at a public hearing, as required by the law. We therefore beg of this Committee that there shall be no wage order at this time changing the minimum as fixed by law for a period of one year beginning in October 1938".

Generally in accord with the conclusions advanced by Dr. Murchison and Mr. McLaurine was the testimony of Mr. J. C. Serrine, Lowell Textile Engineer and expert in factory management. Mr. Serrine's brief was not made a part of the Record, but excerpts from his testimony before Sub-Committee "D" are included here because they tend to amplify the statements made by the Cotton Textile Institute and the American Cotton Manufacturers Association. Mr. Serrine stated (in part):

That an increase in wages does not necessarily increase the output of the textile worker, whose production is usually regulated by the speed of the machine.

That the last half of 1938—contrary to the impressions of some—had not been a prosperous period for the industry.

That, during the 10-year period, 1928-1938, there has been a growth in the industrial use of cotton cloth and a falling off in the apparel use.

That less than 1 percent of all the workers gainfully employed are in the cotton textile industry, and an increase in their wages does not affect the wages of the other 99 percent, nor does it give the other 99 percent any greater purchasing power so far as the products of this industry are concerned.

That there are a great many isolated mills in small communities, and in many instances, those mills are not well equipped. *The effect of the higher minimum will be to put those mills out of business* (italics supplied).

That the textile industry is now running into very serious competition, not only in this country, but with other

textile plants abroad, and with other fibers and substitutes.

That, "as fast as you raise the price, you also curtail the market * * * High prices are the result, not the cause. They come as a result of demand. They don't make demands, they are a consequence".

That is not the purpose of this Committee or the purpose of the law to force anyone out of business, "and if you apply the terms of this law too drastically, you are going to put a lot of them out of business, at least temporarily. That is an inescapable, logical conclusion".

Other representatives of the Employer Group heard by the Committee were:

Mr. Burt C. Blanton and Mr. H. A. Burrows, representing the Southwest Textile Manufacturers Association comprised of some 32 mills in Texas, Oklahoma, and Arkansas. These witnesses stated that the mills of the Southwest operate under a severe handicap in transportation costs; that they need a wage differential of 5 cents per hour in order to continue to compete; and that the minimum wage to be set should not exceed 30-cents per hour.

Mr. R. W. Johnson of Johnson and Johnson, New Jersey Manufacturers of surgical dressings, favored an immediate 40-cent minimum for the entire cotton textile industry. It developed, however, that he manufactures textiles only as a source of supply for a high-priced [1] specialized product and it was stated by Mr. Serrine that Mr. Johnson's knowledge of the textile business as such was "extremely limited".

National Textile Processors Guild, representing the textile dyeing, bleaching, and finishing industry (50 members out of 150 in the field). The memorandum submitted by Mr. Korzenik stated that

"The labor employed in any dye house must be technically skilled, generally adept and imbued with a sense of great responsibility because of the delicacy of the work and the great damage that might result through ineptitude or carelessness."

He accordingly invited a wage order "above the minimum provided by statute". In response to a question, Mr. Korzenik stated that his association represented about 5,000 employees.

The Dyers and Printers Employers Association, representing 40 concerns, located mostly in New Jersey, and employing approximately 10,000 people. Mr. Paul Rittenberg, on behalf of this Association, urged the adoption of "the highest minimum wage in accordance with the provisions of the Fair Labor Standards Act of 1938". He stated that under a labor agreement now in force, unskilled employees receive 66 cents per hour. He did not state, however,—although he was asked the question—how many weeks per year the employees actually worked, but said the occupation was a seasonal one.

Textile Fabrics Association, of New York. Representing an undisclosed number of converters of textile fabrics. This Association, by letter from its president, Mr. W. P. Fickett, urged "the necessity of keeping the price of cotton goods as low as it is possible to keep it, without creating of course any sub-standard conditions of labor. Cotton garments are the apparel of the masses and every effort should be made to give as great a value for the consumer's dollar as possible.

Narrow Fabrics Institute, New London, Connecticut. Representing an undisclosed number of woven elastic manufacturers, braided elastic manufacturers, and braided

non-elastic manufacturers; through their secretary, Mr. Wilwyn Herbert recommended a 32½-cent minimum and urged a "very gradual change".

Rhode Island Textile Association, by letter from its secretary-treasurer, Mr. E. F. Walker, stated that "the members of this association would have no objection to a minimum wage of 30 cents or thereabouts, but not less than 30 cents".

"We might also add", Mr. Walker continued, "that we have very definite information from a number of our members that Mr. Wilwyn Herbert, secretary of the Narrow Fabrics Institute, did not represent their point of view on learners, nor will he represent their point of view at the hearing on the minimum wage if he appears."

Mississippi Textile Manufacturers' Association, by letter from Mr. Robert D. Sanders, president, enumerates the following disadvantages under which the textile industry operates in that state:

Discriminatory freight rates.
A ¼ of 1% manufacturers sales tax.
Lack of any workman's compensation law.
Location away from trained labor supply.

Mr. Sanders states:

"We most earnestly present the above for your kind consideration and want you to know that if the same wages and hours are imposed upon Mississippi mills as the mills of the large textile centers, the textile industry of this state will be ruined and have to close down and put several thousand people out of work."

Mr. A. G. Myers, president of Textiles, Incorporated, Gastonia, North Carolina, in a letter addressed tc the Administrator and turned over to the Committee states:

" * * * I am of the opinion that a minimum wage of 30 cents per hour would not be out of place, while on the other hand a minimum wage above that amount would probably be out of line since it must be remembered that cotton goods must be produced as cheaply as possible since they are used in large quantities by the laboring element and the poorer classes * * * I also feel that there should be some reasonable differential in the wage scale between the mill having its own village and the mill which does not have its village."

Mr. H. P. Claussen, of the Bemis Brothers Bag Company. Mr. Claussen was requested to take any given range in the gross cost of cloth and attempt to translate such increases in terms of increased cost per 1000 bags. He evidently presented a written statement to the Sub-Committee, but it was not made a part of the Record. In the absence of this statement, Mr. Claussen's testimony cannot be fairly analyzed.

Mr. Donald B. Tansill (unidentified in the Record except as a converter, "My responsibility is the laying out and styling of the products of the mill and seeing that these goods are sold. I am not in the manufacturing end of the business".) Mr. Tansill presented no prepared statement, but in response to questions by members of the Sub-Committee, stated:

That an increase of ¼ or 3/8 cent per yard in the price of gray goods would not affect the volume of business, but query as to any increase beyond ½ cent.

In the case of certain articles—e.g., bed sheets, which have sold from 59 cents to $1.09, the volume sold at the lower figure was not greater than that sold at the higher.

"Confidence in the stability of the situation is as important as price."

Mr. Herbert O. Bergdahl (Requested by the Chairman of the Committee to present information to Sub-Committee "D" as to the effects of increased prices of goods on retail distribution). Mr. Bergdahl stated in part:

That rising costs are never absorbed, but are always passed on to the consumer.

That "always at the beginning of a price rise there is a run for the merchandise. Everybody buys to get under the price rise. Then, after they are loaded up, the mills are producing on a higher cost basis. Consumption declines because of the resistance, at least to some extent, on the part of the consumer, and when the buying begins to stop, the price either stabilizes or declines. It generally declines".

Mr. T. J. Burns, Merchandising Manager for W. P. Grant Company. Mr. Burns considered the probable affect upon the retail price of men's shirts and shorts which would result from certain minimum wage rates. It was his opinion that—

In the case of the shirt, presently retailing at 69 cents, a 30-cent minimum would require that the price be raised to 79 cents and that, with a 35-cent minimum, the price would remain unchanged. However, "our experience was that if we raise the price 10 cents, we decrease the

number of units distributed * * * When we move this shirt at 89 cents retail, the item practically dies. Sales are very small. There is resistance from the management and resistance from the consumer."

A similar conclusion was advanced as to the effect of increased manufacturing costs in the case of men's shorts.

Mr. P. W. Lewis (unidentified in the Record) made a similar analysis of the effect of given wage minima upon the retail price of various items and arrived at conclusions substantially in line with those advanced by Mr. Grant.

Mr. J. V. Fox, president of the Blue Bell-Globe Manufacturing Company:

"We manufacture nothing but overalls * * * A 30-cent minimum wage would not affect our selling prices * * * at 32½ cents * * * 89-cent overalls would jump to 98 cents."

Mr. Earl Stall, Textile Engineer. Presented study of effect of given minima upon a small mill employing 315 persons. Mr. Stall stated to the sub-committee—

That a 32½-cent minimum would increase the mill's annual labor costs by $35,850, or 15-¾%.

That the mill is now operating at a substantial loss.

That a minimum wage as high as 32½ cents would close the mill.

That "we have got no money to revamp the mill".

That, in his opinion, the textile industry will have the best opportunity to maintain employment if the minimum wage is left unchanged.

Mr. R. O. Arnold (unidentified in the Record, except as a mill executive):

"In conclusion, I say to you, in all sincerity, that not only are the mill owners against this proposed raise, but the mill workers are against it, the merchants are against it, the farmers are against it, the buying public is against it. Is there any other class of people for whom this legislation should be enacted?"

Mr. R. C. Moore (connected with a heavy sheeting and drill mill in North Carolina), in response to th question—

"Then I take it you feel that any higher minimum than that (25 cents) would substantially curtail employment?"

Answer: "I don't see how we could stand it unless you could assure us that the change in the rate would increase the price of our goods".

Mr. John A. Low (unidentified in the Record):

"I say unqualifiedly and without reserve that I can see no justification, either from the standpoint of financial conditions of the mills or from the present prospects of better market conditions to justify the increasing of wages at the present time."

That completes the summary of the testimony and information presented by the employer group. Measured by the standards described at the outset of this part of the Minority Statement, not only is there nothing in the Employer group's testimony which would tend affirmatively to sustain the Majority's recommendation, *but it is against any change whatever in the minimum wage rate at the present time. And bearing on the question of whether such a drastic increase in labor costs would*

produce substantial unemployment, the overwhelming weight of employer testimony is that it would.

The next group to be heard by the Committee was that representing such of the employees as have become members of labor unions. Principal spokesman for the CIO group was Mr. Solomon Barkin, Research Director of the TWOC, while the A. F. of L. was represented by Mr. Brois Shiskin, of the National Council of Textile Unions.

The extraordinary position assumed by the representatives of organized labor at this hearing makes it difficult fairly to appraise the value of the testimony and information presented in its relation to the questions now before the Administrator. These questions, it may be recalled, are, first, whether the 32½-cent minimum wage recommendation of the Majority was made in accordance with law; and, second, whether the information and testimony presented to and considered by the Committee, including the information and testimony bearing upon all relevant economic and competitive conditions, are sufficient to warrant the conclusion of the Committee that a 32½-cent minimum wage recommendation would not, if approved, result in a substantial curtailment of employment.

The representatives of organized labor unanimously supported a flat 40-cent minimum and declined to consider any intermediate figure, including the one finally recommended by the Committee.

Their position was that sub-standard conditions of living prevailed in the Textile Industry; that the policy of the Act was to do away with such sub-standard conditions and "chiselling"; that an impossible competitive condition existed between the Northern and Southern

branches of the industry by reason of the lower wages paid by the latter; that, on the matter of unemployment extensive unemployment would result in the North unless a 40-cent minimum should be adopted; and that the increased purchasing power which would result from a 40-cent minimum wage, far from producing substantial unemployment, would in fact make for better prices, a larger volume of sales, and the general rehabilitation and stabilization of the entire industry, both in the North and South. It was also stated that the country was (December 1938) upon the threshold of a substantial economic upturn [1] and that this would further assist the industry and consumers to absorb the added cost of a 40-cent minimum wage.

Can it be said that this argument for a 40-cent minimum supports a 32½-cent recommendation? If—as was repeatedly stressed by the representatives of organized labor—a 40-cent minimum is necessary to prevent the "denuding" of Northern textile centers, with attendant dislocations in employment, are these statements to be considered as tending to sustain the 32½-cent recommendation that was actually made by the Committee? Obviously, the labor representatives themselves did not intend to support a 32½-cent recommendation. They presented no data to establish that any figure *less than 40 cents* would prevent the "further denuding" of Northern textile centers, or would increase general purchasing power to any appreciable extent. On the contrary, they appeared to feel that the highest minimum wage permitted under the law might not be sufficient to arrest this process. The Record is clear on this point. In response to the question by Mr. Nickerson—

[1] The New York Times index of business activity was around 94 in December, 1938. Last week, as the Temporary National Economics Committee began hearings in an effort to determine the causes of continued depression, the Times index stood at 86.2.

"Would you oppose below 40—differentials or classifications?" Mr. Barkin answered (P. 240, Vol. 3 Record of Hearing):

"That is right. We believe it is entirely an economic necessity to set the 40-cent level. I do not think the problem of differentials enter into it, because we believe it is advisable to set it at the 40-cent level. It will not curtail employment, and does not involve any possibility of establishing a lower minimum."

Mr. Shiskin, of the A. F. of L. affirmed this statement of the C. I. O. representative with an equally strong declaration of his own (P. 318).

"We think that in the evidence we shall introduce we can show that any rate lower than the 40-cent rate will have a tendency of substantially increasing unemployment in the long run and defeating the purpose of the Act."

It may be said, however, that since the labor representatives did argue for a higher minimum than that recommended, that this line of testimony does, in a sense, tend to support and sustain the recommendation of the Committee. *The answer to this is that not one of the basic conclusions upon which the labor group finally rested its case is supported by any factual data presented to the Committee.*

Was production picking up and a general business recovery under way in December 1938?

Was any convincing evidence presented that a 32½-cent minimum wage would increase general purchasing power by an amount sufficient to enable the industry and consumers to absorb these added costs?

There is much in the Record to establish that an increase in the minimum wage rate at this time *would* substantially curtail employment. Is there anything in the Record from which the Committee might reasonably find that it *would not?*

A careful examination of the entire Record fails to provide any tenable basis for an affirmative answer to these questions. And until they are answered with some semblance of authority, how can the Committee make any wage recommendation which would be in accordance with the clearly stated intent of Congress and the plain requirements of the Act?

It is unnecessary to add, the Minority feel sure, that this matter of fixing a minimum wage for one of the largest industries in the country is a serious one. The powers delegated by Congress to the Industry Committee and the Administrator affect the lives and livelihood of a very large number of people. If the Act is carefully and realistically administered, with due regard at every step to all of the economic and competitive conditions intended by Congress to be taken into account, it can and should operate to the lasting benefit of the industry, its employees, and the public. If, on the other hand, its objectives are approached in an over-hasty or superficial or irresponsible manner—without giving due consideration to clearly relevant economic and competitive conditions—the result is easily foreseen. Mills will be forced to close down. Thousands, now employed, will lose their jobs and take their places on the relief rolls. And finally Congress—*noting the failure of the law to work*—will repeal it and the cause of higher wages and better living conditions will receive another setback.

The Minority subscribe unreservedly to a statement made by the Administrator in a public address delivered in Detroit on December 29, 1938:

"If the ultimate objectives of the Fair Labor Standards Act are to be attained, it is argued that this cost raising process must proceed gradually and steadily so as to minimize the resulting dislocation of employment.

[In the case of the Textile Industry] "This slow process may be somewhat tiresome to those who consider the raising of labor standards to be a simple matter, but it is clearly required if the eventual wage orders are to avoid conferring a competitive advantage on any group in the industry and to avoid any substantial curtailment of employment."

In the present instance, the recommendation of the Majority was not made in accordance with law.

It is not sustained by the information and testimony of Record and considered by the Committee. On the contrary, the greater weight of this evidence is against any change in the minimum wage at the present time. It also strongly indicates that the proposed 32½-cent minimum would, if approved, produce substantial unemployment.

The economic condition of the industry, far from improving, as was predicted by some, has undergone a steady deterioration since the Committee last met. In December, the *New York Times* Index of Business Activity was around 94; last week it stood at 86.2. According to the Census Bureau, cotton consumption by domestic mills declined from 649,237 bales in March to 543,702 bales in April. Active cotton spindles declined from 22,742,330 in March to 22,109,394 in April. Last week mill margins were at the lowest point in six years. The declines in amount of cotton consumed and number of spindles in place are of course contrary to the usual seasonal trend.

And before the full effects of the 25-cent minimum can be fully appraised, a further raise to 30 cents must be made in any event. That Congress intended that changes beyond the statutory minima should be made gradually is shown by the provision that this process of attaining the 40-cent maximum may be extended over 7 years. Why, then, all the haste to perform another major operation upon this ailing industry? The Minority earnestly feel that—apart from the fact that there has been no sufficient compliance in this case with the requirements of the Act—considerations of sound administrative and public policy dictate a more gradual approach to our common objective. Little can be lost and much may be gained by observing the effects of these statutory increases before resort to such a drastic application of the law as that urged by the Majority. Moreover, a more gradual approach will afford time in which to fix minima for other and competing low-wage industries, thereby simultaneously increasing the purchasing power of a maximum number of the low-income group.

For all of these reasons, the Minority of Industry Committee No. 1 must dissent from the recommendation of the Majority and respectfully urge that such recommendation be disapproved.

Signed: C. A. CANNON,
JOHN R. CHEATHAM,
ROBERT H. CHAPMAN,
R. R. WEST,
E. L. FOSHEE,
P. O. DAVIS,
TYRE TAYLOR,
(Counsel for the Minority).

Washington, D. C.,
May 22, 1939.

Transportation Cost, in cents per 100 pounds, via routes over which lowest rates are available, on *Finished Cotton Fabrics in Original Piece* to the largest consuming market, *New York City,* from representative origins in all section of the Southern States and of the Eastern and New England states constituting the principal textile manufacturing districts.

From Representative Eastern Mill

Points	Rate	Route	Tariff Auth.
Connecticut—			
Danielson	35	AR	1
Grosvenordale	35	AR	1
Jewett City	31	AR	1
Moosup	31	AR	1
New Haven	26	AR	1
New London	26	AR	1
New Milford	29	AR	1
Norwich	31	AR	1
Plainfield	31	AR	1
Wauregan	31	AR	1
Delaware—			
Kentmere	41	AR	3
Rockford	41	AR	3

From Representative Southern Mill

Points	Rate	Route	Tariff Auth.
Alabama—			
Anniston	92	RW	2
Birmingham	92	RW	2
Cordova	92	RW	2
Fayette	96	RW	2
Huntsville	92	RW	2
Montgomery	92	RW	2
Opelika	92	RW	2
Opp	92	RW	2
Pell City	92	RW	2
Sylacauga	92	RW	2
Georgia—			
Atlanta	92	RW	2
Augusta	81	RW	2

Maine—			
Biddeford	51	RW	4
Brunswick	55	RW	4
Lewiston	57	RW	4
Massachusetts—			
East Dedham	40	AR	1
Fall River	26	AR	1
Housatonic	35	AR	1
Lawrence	44	RW	4
Lowell	44	RW	4
New Bedford	26	AR	1
North Adams	26	AR	5
Southbridge	35	AR	1
Taunton	31	AR	1
Webster	35	AR	1
New Hampshire—			
Dover	47	RW	4
Manchester	44	RW	4
Nashua	44	RW	4
Chickamauga	92	RW	2
Columbus	92	RW	2
Fitzgerald	92	RW	2
Griffin	92	RW	2
La Grange	92	RW	2
Macon	92	RW	2
Rome	92	RW	2
Toccoa	92	RW	2
Mississippi—			
Columbus	99	RW	2
Laurel	99	RW	2
McComb	99	RW	2
Natchez	99	RW	2
North Carolina—			
Asheville	85	RW	2
Charlotte	76	RW	2
Concord	76	RW	2
Gastonia	81	RW	2
Greensboro	67	RW	2
Hickory	85	RW	2

From Representative Eastern Mill

Points	Rate	Route	Tariff Auth.
Somersworth	47	RW	4
Suncook	46	RW	4
New Jersey—			
Bridgeton	42	AR	3
Passaic	28	AR	3
Paterson	28	AR	3
New York—			
Chadwick	31	AR	6
New Hamburg	19	AR	7
New York Mills	31	AR	7
Troy	31	AR	7
Utica	31	AR	6, 7, 8
Pennsylvania—			
Chester	38	AR	3
Philadelphia	37	AR	3
Rhode Island—			
Apponaug	26	AR	1

From Representative Southern Mill

Points	Rate	Route	Tariff Auth.
Lexington	76	RW	2
Raleigh	67	RW	2
Salisbury	76	RW	2
Winston Salem	67	RW	2
South Carolina—			
Anderson	81	RW	2
Chester	81	RW	2
Columbia	81	RW	2
Graniteville	81	RW	2
Greenville	81	RW	2
Hartsville	81	RW	2
Newberry	81	RW	2
Rock Hill	81	RW	2
Spartanburg	81	RW	2
Greenwood	81	RW	2
Tennessee—			
Chattanooga	92	RW	2
Knoxville	86	RW	2
Memphis	99	RW	2

Cranston	26	AR	1
East Greenwich	26	AR	1
Lonsdale	31	AR	1
Pawtucket	29	AR	1
Phillipsdale	29	AR	1
Providence	26	AR	1
Saylesville	29	AR	1
Warren	26	AR	1
Westerly	27	AR	1
Totals	1711		

Average from 50 representative Eastern points shown 34.2

Nashville	92	RW	2
Virginia—			
Danville	58	RW	2
Martinsville	67	RW	2
Totals	4261		

Average from 50 representative Southern points shown 85.2

Average amount by which transportation cost from representative Southern Points exceeds that from representative Eastern points shown

51 cents per 100 pounds.

Explanation of route references—

AR Via All Rail. RW Via Rail and Water Routes.

Explanation of tariff authority references:

1—NYNH&H RR ICC F 3518

2—Agent F. D. Miller's ICC 176.

3—Agent W. S. Curlett's ICC A-445.

4—Boston and Maine Railroad ICC A-2899.

5—Boston and Albany Railroad ICC 9390.

6—Delaware, Lackawanna & Western Railroad ICC 23685.

7—New York Central Railroad ICC 16776 (Items 6795, 6800, 6805 and 7088 of Supplement 99.

8—NYC&W Railroad ICC 10034.

October 1, 1938.

Comparison of *Transportation Costs,* via *Standard All Rail Routes,* From Atlanta, Ga., (Base Group Point in Southern Mill Territory) and from Boston, Mass:, (Base Group Point in New England Mill Territory) on *Finished Cotton Fabrics in Original Piece* to Important Markets as represented by Principal Cities of the United States *East of the Mississippi River, showing differences in distances and differences in rates.*

To Principal Cities	Population (1930 Census)	Distance in Miles From Atlanta	Distance in Miles From Boston	Rates Cents per 100 lbs. From Atlanta	Rates Cents per 100 lbs. From Boston	Location Nearer Atlanta Mi.	Location Nearer Boston Mi.	Transportation Cost Lower From Atlanta Cts.	Transportation Cost Lower From Boston Cts.
New York, N. Y.	6,930,446	870	247	107	40	..	623	..	67
Chicago, Ill.	3,376,438	729	973	106	106	244	..	..	..
Philadelphia, Pa.	1,950,961	773	334	102	61	..	439	..	41
Detroit, Mich.	1,568,662	728	706	106	90	..	22	..	16
Cleveland, O.	900,429	714	654	105	84	..	60	..	21
St. Louis, Mo.	821,960	603	1174	97	120	571	..	23	..
Baltimore, Md.	804,874	681	431	98	68	..	250	..	30
Boston, Mass.	781,188	1097	0	116	0	..	1097	..	116
Pittsburgh, Pa	669,817	773	663	109	88	..	110	..	21
Milwaukee, Wis.	578,249	812	950	110	106	138	..	..	4
Buffalo, N. Y.	573,076	895	475	116	75	..	420	..	41
Washington, D. C.	486,869	643	457	98	71	..	186	..	27
New Orleans, La.	458,762	490	1575	87	145	1085	..	58	..
Cincinnati, Ohio	451,160	475	892	85	103	417	..	18	..

To Principal Cities	Population (1930 Census)	Distance in Miles From Atlanta	Distance in Miles From Boston	Rates Cents per 100 lbs. From Atlanta	Rates Cents per 100 lbs. From Boston	Location Nearer Atlanta Mi.	Location Nearer Boston Mi.	Transportation Cost Lower From Atlanta Cts.	Transportation Cost Lower From Boston Cts.
Newark, N. J.	442,337	853	247	107	57	..	606	..	50
Indianapolis, Ind. ...	364,161	559	933	94	103	374	..	9	..
Rochester, N. Y.	328,132	964	408	118	67	..	556	..	51
Jersey City, N. J.....	316,715	860	247	107	57	..	613	..	50
Louisville, Ky.	307,745	449	1010	84	109	561	..	25	..
Toledo, Ohio	290,718	672	759	102	90	87	..	..	12
Columbus, Ohio	290,564	590	791	96	96	201	..	..	..
Atlanta, Ga.	270,356	0	1037	0	116	1097	..	116	..
Birmingham, Ala. ...	259,678	166	1220	53	127	1054	..	74	..
Akron, Ohio	255,040	716	683	105	88	..	33	..	17
Memphis, Tenn.	253,143	417	1390	80	134	973	..	54	..
Providence, R. I.	252,981	1070	44	116	29	..	1026	..	87
Syracuse, N. Y.	209,326	1029	328	118	61	..	701	..	57
Dayton, Ohio	200,982	529	838	91	100	309	..	9	..
Worcester, Mass. ...	195,311	1062	44	116	29	..	1018	..	87
Richmond, Va.	182,929	542	573	87	79	31	..	..	8
Totals		20761	20143	2916	2499	7142	7760	386	803
Average		692	671	97	83	..	21	..	14

October 1, 1938.

Comparison of *Transportation Costs,* in cents per 100 pounds via (AR) *Standard All Rail Routes,* and (RW) *lowest rated routes* via which any substantial amount of this traffic is handled (either Rail, Water, Rail and Water; or Rail-Water and Rail, (whichever is lower) from Atlanta, Ga., and Charlotte, N. C., Representative Base Group Mill Points in Southern Territory and from Philadelphia, Pa., and Boston, Mass., Representative Base Group Mill Points in Eastern and New England Territory, on *Finished Cotton Fabrics in Original Piece* to most important markets as represented by 25 largest cities of the United States.

To Principal Cities	Population (1930 Census)	Rates via Standard All Rail Routes				Rates via Lowest Rated Routes			
		Boston	Phila-delphia	Char-lotte	Atlanta	Boston	Philadelphia	Charlotte	Atlanta
New York, N. Y.	6,930,446	40	37	90	107	40	37	76	92
Chicago, Ill.	3,376,438	106	101	106	106	91	91	106	106
Philadelphia	1,950,961	61	0	84	102	56	0	76	92
Detroit, Mich.	1,568,662	90	85	106	106	84	79	106	106
Los Angeles, Cal.	1,238,048	298	298	298	274	126.5	126.5	174.35	169.35
Cleveland, O.	900,428	84	74	97	105	80	69	97	105
St. Louis, Mo.	821,960	120	111	106	97	112	102	106	97
Baltimore, Md.	804,874	68	38	77	98	57	38	69	87
Boston, Mass.	781,188	0	61	99	116	0	56	81	98
Pittsburgh, Pa.	669,817	88	65	89	109	88	65	89	109
San Francisco	634,394	298	298	298	274	105.75	105.75	153.6	148.6
Milwaukee, Wis.	578,249	106	105	117	110	93	96	117	110

To Principal Cities	Population (1930 Census)	Rates via Standard All Rail Routes				Rates via Lowest Rated Routes			
		Boston	Phila-delphia	Char-lotte	Atlanta	Boston	Philadelphia	Charlotte	Atlanta
Buffalo, N. Y.	573,076	75	70	99	116	75	70	99	116
Washington, D. C...	486,869	71	42	74	98	71	42	74	96
Minneapolis, Min...	464,356	158	151	165	156	130	125	165	156
New Orleans, La....	458,762	145	135	108	87	103	103	108	87
Cincinnati, O.	451,160	103	88	91	85	96	84	91	85
Newark, N. J.....	442,337	57	37	90	107	57	37	79	96
Kansas City, Mo....	399,746	166	151	155	142	153	143	155	142
Seattle, Wash.	365,583	298	298	298	274	107.5	107.5	155.35	150.35
Indianapolis	364,161	103	89	100	94	98	89	100	94
Rochester, N. Y.....	328,132	67	62	99	118	67	62	99	118
Jersey City, N. J....	316,715	57	37	90	107	57	37	76	92
Louisville, Ky.	307,745	109	97	90	84	103	92	90	84
Portland, Ore.	301,815	298	298	298	274	107.5	107.5	155.35	150.35
Totals		3066	2828	3324	3346	2158.25	1964.25	2697.65	2786.65
Averages		123	113	133	134	86	79	108	111

Average rates from Southern Base Groups, Atlanta and Charlotte Exceed Average Rates from Eastern Base Group, Boston and Philadelphia by—

16 cents per 100 lbs. via Standard all rail routes.

27 cents per 100 lbs. via Lowest Rated routes.

For Release Morning Papers,
Saturday, May 27, 1939.

ADM. EX. 8.

Notice of Hearing on Minimum Wage Recommendations and Report of Industry Committee No. 1 for the Textile Industry.

Whereas, the Administrator of the Wage and Hour Division of the United States Department of Labor, acting pursuant to Section 5 (b) of the Fair Labor Standards Act of 1938, on September 13, 1938, appointed Industry Committee No. 1 for the Textile Industry, composed of an equal number of representatives of the public, employers in the industry and employees in the industry, such representatives having been appointed with due regard to the geographical regions in which the industry is carried on, and

Whereas, Industry Committee No. 1 has duly adopted a report containing recommendations and reasons therefor with respect to the matters referred to it and has filed such report with the Administrator on May 23, 1939, pursuant to Section 8 (d) of the Act and Section 511.19 of the Regulations issued under the Act, and

Whereas, the Administrator is required by Section 8 (d) of the Act, after due notice to interested persons and giving them an opportunity to be heard, to approve and carry into effect by order the recommendations of such Industry Committee if he finds that the recommendations are made in accordance with law and are supported by

the evidence adduced at the hearing before him and, taking into consideration the same factors as the Industry Committee is required to consider by Sections 8 (b) and 8 (c) of the Act, will carry out the purposes of Section 8 of the Act; and, if he finds otherwise, to disapprove such recommendation.

Now, Therefore, notice is hereby given that:

I. The full text of the recommendations of Industry Committee No. 1 is as follows:

"Thirty-two and one-half cents (32½ cents) per hour shall be the minimum wage rate to be paid all employees in the textile industry defined (by Administrative Order No. 25, dated May 22, 1939) as follows:

(a) The manufacturing or processing of yarn or thread and all processes preparatory thereto, and the manufacturing, bleaching, dyeing, printing and other finishing of woven fabrics (other than carpets and rugs) from cotton, silk, flax, jute or any synthetic fiber, or from mixtures of these fibers; or from such mixtures of these fibers with wool or animal fiber (other than silk) as are specified in clauses (g) and (h); except the chemical manufacturing of synthetic fiber and such related processing of yarn as is conducted in the establishments manufacturing synthetic fiber;

(b) The manufacturing of batting, wadding or filling and the processing of waste from the fibers enumerated in clause (a);

(c) The manufacturing, bleaching, dyeing, or other finishing of pile fabrics (except carpets and rugs) from any fiber or yarn;

(d) The processing of any textile fabric, included in this definition of this industry, into any of the following products: bags; bandages and surgical gauze; bath mats and related articles; bedspreads; blankets; diapers; dish-cloths, scrubbing cloths and wash-cloths; sheets and pillow cases; table-cloths, lunch-clothes and napkins; towels; and window-curtains;

(e) The manufacturing or finishing of braid, net or lace from any fiber or yarn;

(f) The manufacturing of cordage, rope or twine from any fiber or yarn;

(g) The manufacturing or processing of yarn or thread by systems other than the woolen system from mixtures of wool or animal fiber (other than silk) with any of the fibers designated in clause (a), containing not more than 45 percent by weight of wool or animal fiber (other than silk);

(h) The manufacturing, bleaching, dyeing, printing or other finishing of woven fabrics (other than carpets and rugs) from mixtures of wool or animal fiber (other than silk) containing not more than 25 percent by weight of wool or animal fiber (other than silk), with any of the fibers designated in clause (a), with a margin of tolerance of 2 percent to meet the exigencies of manufacture."

II. The full text of the report and recommendations of the Industry Committee No. 1 is available for inspection by any person between the hours of 9:00 a. m. and 4:30 p. m. at the following places:

Boston, Mass., 120 Boylston Street.
New York, N. Y., 412 Federal Bldg., 641 Washington St.
Philadelphia, Pa., 1222 Widener Bldg.

Pittsburgh, Pa., 214 Old Post Office Bldg.
Newark, N. J., 424 Federal Bldg.
Cleveland, Ohio, 540 Old Federal Bldg.
Detroit, Mich., 949 Federal Bldg.
Chicago, Ill., 964 Merchandise Mart.
Indianapolis, Indiana, % National Emergency Council, 511 Chamber of Commerce Bldg.
Milwaukee, Wis., 314 Federal Bldg.
Richmond, Va., 614 Parcel Post Bldg.
Baltimore, Md., 6th Floor, Snow Bldg., Calvert & Lombard Sts.
Washington, D. C., 5th Floor, Dept. of Labor.
Atlanta, Ga., 101 Marietta St. Bldg., 105 Marietta Street.
Birmingham, Ala., 1617 Comer Bldg.
Jacksonville, Fla., 225 Post Office Bldg.
Charlotte, N. C., 235 Post Office Bldg.
Columbia, S. C., 101 Federal Bldg.
Nashville, Tenn., 119 Seventh Ave., North.
St. Louis, Mo., 314 Old Federal Bldg., 815 Olive St.
Kansas City, Mo., 539 New Post Office Bldg.
Minneapolis, Minn., 406 New Post Office Bldg.
Des Moines, Iowa, % Social Security Board, 303 Old Federal Bldg.
Dallas, Texas, 618-621 Wilson Bldg.
Houston, Texas, 603 Federal Bldg.
San Antonio, Texas, Maverick Bldg.
Oklahoma City, Okla., 511 Federal Bldg.
New Orleans, La., 516 Carondelet Bldg.
San Francisco, Calif., 785 Market St.
San Juan, P. R., Box 1431, Post Office.
Juneau, Alaska, B. D. Stewart.

Copies of the Committee's report and recommendations may be obtained by any person upon request addressed to the Administrator of the Wage and Hour Division, Department of Labor, Washington, D. C.

III. A public hearing on the question of whether the recommendations of Industry Committee No. 1 shall be approved or disapproved pursuant to Section 8 of the Act and at which all interested persons will be given opportunity to be heard in support of or in opposition to the recommendations of Industry Committee No. 1 will be held before Elmer F. Andrews, Administrator, or a representative designated to preside in his place, to convene at the Raleigh Hotel, 12th Street and Pennsylvania Avenue, N. W., Washington, D. C., at 10 o'clock a. m. on June 19, 1939, and to be continued at Ansley Hotel, Atlanta, Georgia, at 10 o'clock a. m. on June 26, 1939, and thereafter continued at Washington, D. C. at a time and place to be prescribed by the Presiding Officer in the record of the proceedings.

IV. Any interested person supporting or opposing the recommendations of Industry Committee No. 1 may appear at the aforesaid hearing to offer evidence, either on his own behalf, or on behalf of any other person, provided that not later than June 14, 1939, such person shall file with the Administrator at Washington, D. C., a notice of his intent to appear which shall contain the following information:

1. The name and address of the person appearing.

2. If such person is appearing in a representative capacity, the name and address of the person or persons whom he is representing.

3. Whether such persons proposes to offer evidence for or against the recommendations of Industry Committee No. 1 and a brief summary of what he intends to show.

4. The approximate length of time requested for his presentation.

Such notice may be mailed to Elmer F. Andrews, Administrator, Wage and Hour Division, Department of Labor, Washington, D. C. and shall be deemed filed upon receipt thereof.

V. The hearing will be conducted in accordance with the following rules, subject, however, to such modifications as are subsequently deemed appropriate by the Presiding Officer.

1. The hearing shall be stenographically reported and a transcript made which will be available to any person at prescribed rates upon request made to the official reporter.

2. The Presiding Officer may call for production of evidence upon any issue and may continue the hearing from time to time and to a place which shall be shown in the record of the proceedings.

3. In order to maintain orderly and expeditious procedure, the Presiding Officer will notify each person filing a notice of intention to appear of the day on and place at which he may offer evidence at the hearing. If such person does not appear at the time set in the notice, he will not be permitted to offer evidence at any other time except by special permission of the Presiding Officer.

4. The Presiding Officer may permit any person appearing in accordance with paragraph IV to cross-examine any witness offered by (another person in so far as is practicable and to object to the admission or exclusion of evidence by the Presiding Officer.) Requests for permission to cross-examine a witness offered by another person and

objections to the admission or exclusion of evidence shall be stated briefly with the reasons for such request or the grounds of objection relied on. The record shall not include argument thereon except as ordered by the Presiding Officer. The rules of evidence prevailing in Courts of Law or Equity shall not be controlling.

5. Industry Committee No. 1 will be represented at the hearing by its counsel who will open and close the proceeding.

6. All evidence must be presented under oath or affirmation. Written arguments, documents or exhibits, except as otherwise permitted by the Presiding Officer, must be offered in evidence by a person who is prepared to testify with respect to the authenticity and trustworthiness thereof and who shall, at the time of offering the document or exhibit, make a brief statement as to the contents and manner of preparation thereof. Where evidence is embraced in a document containing matter not intended to be put in evidence, such document will not be received, but the person offering the same may present to the Presiding Officer the original document together with true copies of those portions of the document intended to be put in evidence. Upon presentation of such copies in proper form, the copies will be received in evidence. Written documents and exhibits shall be tendered in duplicate, but the person presenting the same shall be prepared to supply additional copies if such are ordered by the Presiding Officer.

7. Subpoenas requiring the attendance of witnesses or the presentation of documents at the hearing may be issued by the Administrator in his discretion and any person may apply in writing for the issuance by the Administrator of a subpoena. Any application for a subpoena must describe as exactly as practicable the evidence proposed to be secured by the subpoena. Witnesses summoned before the Administrator shall be paid the same

fees and mileage that are paid witnesses in the Courts of the United States. Witness fees and mileage shall be paid by the party at whose instance the witnesses appear.

8. Before the close of the hearing, the Presiding Officer may in his discretion offer to all persons who have appeared in the proceeding an opportunity to give oral argument in which case the Presiding Officer shall designate a time and place for such oral argument and shall place such restrictions with respect to time and order of appearance upon persons giving oral argument as he deems appropriate to further the orderly and expeditious conduct of the proceeding.

9. Any person who has appeared in the proceeding may file written briefs (not fewer than 12 copies) with the Presiding Officer within such time and subject to such limitations and restrictions as are prescribed at the hearing. Such briefs shall be available for inspection at the office of the Administrator in Washington D. C., and copies may be obtained from the official reporter at the prescribed rates. Except upon cause shown, no reply briefs will be accepted.

10. Except as may be expressly permitted in particular instances, the Presiding Officer will not receive in evidence any documents, letters or other written statements submitted for consideration in connection with the proceeding after the close of testimony.

11. No order issued as a result of the hearing will take effect until after due notice is given of the issuance thereof by publication in the Federal Register.

Signed at Washington, D. C., this 26th day of May, 1939.

ELMER F. ANDREWS,
(Elmer F. Andrews)
Administrator, Wage and Hour Division, Department of Labor.

June 17, 1939.

To Whom It May Concern:

The notice of hearing on the recommendation of Industry Committee No. 1 setting the dates of June 19, 1939, in the Hotel Raleigh at Washington and June 26, 1939, at the Ansley Hotel, Atlanta, Georgia, for the convening of the public hearing required by the Fair Labor Standards Act, was published on May 27, 1939, in the Federal Register.

In addition, a press release based on the same, a copy of which is attached, was published in full in the Daily News Record on May 29, 1939. This is a daily trade publication covering the textile industry.

A press release stating that Administrator Elmer F. Andrews had scheduled these dates and places for the convening of the public hearing also was given to the A. P., the U. P., International News Service and the larger daily newspapers of the country which maintain Washington bureaus, on May 23. Clippings in our possession show that this press release was widely published in regions where the textile industry is located, notably in the South, East and in New England. Also we are in possession of a great many clippings, mostly from Southern newspapers, mentioning these dates of hearing in connection with meetings of the American Cotton Manufacturers' Association and other trade groups called for the purpose of planning appearances at the same.

I certify that the facts set forth in the foregoing are true and correct to the best of my knowledge, information and belief.

GEORGE H. KENNEDY, JR.,
Acting Chief, Magazine, Trade and Labor Relations Section, Information Branch, Wage and Hour Division, U. S. Department of Labor.

Sworn and subscribed to before me this 17th day of June, 1939, at Washington, D. C.

HARRIETTE E. SPALDING,
Notary Public.

OBJECTIONS DICTATED INTO RECORD BY TYRE TAYLOR ATTORNEY, BEFORE ADMINISTRATOR.

Mr. Taylor:

Now, Mr. Administrator, I wish at this time to enter certain objections upon which the minority or the opposition expects to rely.

Mr. Administrator, Sec. 10 (a) of the Fair Labor Standards Act of 1938, dealing with the subject of Court review of Administrative Wage Orders, provides in part—

"No objection to the order of the Administrator shall be considered by the Court unless such objection shall have been urged before the Administrator or unless there were reasonable grounds for failure to do so."

With particular reference to the provision of the Act just quoted, and in an effort to comply with the requirements of the Act in this regard, I now wish to urge before you, Mr. Administrator, certain objections, in addition to the objections heretofore urged before you, against approval of the recommendation of Industry Committee No. 1. I shall make these objections under four main headings. The first will deal with the appointment of the Committee.

I. Sec. 5 (b) of the Act provides: "An Industry Committee shall be appointed by the Administrator without regard to other provisions of law regarding the appointment and compensation of employees of the United States. It shall include a number of disinterested persons repre-

senting the public, one of whom the Administrator shall designate as Chairman, a like number of employees representing employees in the industry, and a like number representing employers in the industry. In the appointment of the persons representing each group, the Administrator shall give due regard to the geographical regions in which the Industry is carried on."

It is in evidence—and to any extent that it is not in evidence, we ask that you, sir, take judicial notice of the fact—that a majority of the total number of workers engaged in industries within the jurisdiction of Industry Committee No. 1 are in that geographical region which has been designated as "the cotton-growing states" and that an overwhelming majority of the wage earners who would be directly affected by the minimum wage recommended by the Committee are in this Southern region.

Reference to Administrative Order No. 1 discloses that 12 of the 21 members of the Committee, or a majority, were appointed from non-cotton-growing states and that, notwithstanding the mandatory provision of the Act that "in the appointment of members of each group, the Administrator shall give due regard to the geographical regions in which the industry is carried on", 5 of the 7 employee members were appointed from non-cotton-growing states.

In addition, it appears that two of the members of the Committee resigned, and that on January 4, 1939, after all public hearings had been concluded, the Administrator appointed two other members in the place of those resigned, and said two new members had no part in the public hearings of evidence submitted to the Committee.

Mr. Administrator, it is our contention, hereby respectfully advanced, that the meaning of the Act and the intent

of Congress in passing the Act are perfectly clear on this point of representation. Congress intended and the Act in express terms requires that a majority of the Committee and of each of its groups shall come from that geographical region in which a majority of the workers who will affected live and in which a majority of the industry is carried on. Unless the words "shall give due regard to the geographical regions in which the industry is carried on" means this, they mean nothing, and it is not to be presumed that Congress intended its own words to be meaningless or its own acts a nullity.

It is no answer to say that it would have been difficult to select representatives of the unorganized employees as such—who constitute the overwhelming majority of workers in this industry. It would have been no more difficult to select these than it was to select representatives of the public, which of course is also an unorganized group.

For these reasons, Mr. Administrator, we object and urge before you that the recommendation of Industry Committee No. 1 is a nullity that should not be recognized or approved by you. Your authority, it is respectfully submitted, Mr. Administrator, is confined solely to that authority, express or implied, conferred upon you by the Congress. In this instance, Congress prescribed the method and basis of appointment of Industry Committees, including the one for the Textile Industry. That method was disregarded by you in the appointment of this Committee. Of course I need not add, Mr. Administrator, that no question of good faith is here raised. Neither do we know —nor do we regard it as a matter pertinent to this objection—whom you consulted before you appointed this Committee. Our objection is that in result the mandatory requirements of the Act were not complied with and that, for this reason, the recommendation of the Committee should not and cannot legally be approved by you.

Furthermore—and in this same connection, Mr. Administrator—it is our view that the affirmative duty rests upon the Administrator, under the Act, not only to appoint Industry Committees in accordance with law, setting forth fully in his Administrative Orders of such appointments the detailed basis of representation upon which such appointments are made, but that it is his duty—and upon his own motion—to correct any mistakes or errors which he may make. It has been more than once suggested in the course of this hearing that certain questions, including that here under discussion, would probably have to be determined by the Courts. May I object and urge before you, Mr. Administrator, that Congress intended that the Fair Labor Standards Act should be administered by the Administrator and not by the Courts, and that, furthermore, the duty rests upon the Administrator to proceed in accordance with law, even though this may entail the lost motion of substituting for an illegally constituted committee, one legally constituted and "each group of which is appointed with due regard to the geographical regions in which the industry is carried on".

II. The second main heading under which I wish to make and urge before you objections to the approval of the recommendation of Industry Committee No. 1—and without waiving the foregoing objections, relates to the action of the Committee itself. This general objection may be stated as follows:

The Recommendation of Industry Committee No. 1 was not made in accordance with law and should, therefore, be disapproved by the Administrator.

The last sentence of Sec. 8 (b) of the Act provides:

"The Committee shall recommend to the Administrator the highest minimum wage rates for the industry which

it determines, having due regard to economic and competitive conditions, will not substantially curtail employment in the industry."

Sec. 8 (d) of the Act provides, in substance, that the Administrator shall approve and give effect to the recommendation of an Industry Committee only if he finds, among other things, that such recommendation is made in accordance with law and that, otherwise, he shall disapprove it.

Objection is hereby entered that the recommendation of Industry Committee No. 1 was not made in accordance with law for the reason that due regard was not given to the following relevant "economic and/or competitive conditions" prevailing within this Industry:

(a) The subject of freight rates was given wholly inadequate consideration by the Committee. Clearly—as subsequent testimony has shown—this is an economic or competitive factor which the Committee was required by law to investigate before arriving at a determination as to what its recommendation should be.

(b) The possible desirability, if a substantial curtailment of employment is not to result, of a lower minimum than that recommended due to the bi-modal character of the Southern textile wage structure. It is recognized that this system exists in the South. There has also been introduced here testimony that we regard as conclusive that the chief impact of the recommended minimum, plus its consequences upon the higher wage brackets, will be sustained by mills in the South. We object that, from the standpoint of the probable effect of this recommended minimum upon employment, wholly inadequate consideration was given by the Committee to this factor.

(c) Taxation and the relative tax burden borne by mills in the North and South.

(d) The economic consequences, in terms of increased purchasing power, of the recommended minimum. There was evidence submitted that, in the case of the workers receiving an increase in compensation, their effective purchasing power would be increased by some amount. No investigation was made, however, of the extent to which this process would represent merely a transfer of purchasing power to this group from farmers, intra-state workers, and workers who will lose their jobs if this 32½-cent minimum is applied.

(e) The effect of reciprocal trade treaties, including that now in force between this country and Great Britain.

(f) The probable effect of the Government's program with respect to raw cotton, including the effect of the export subsidy.

(g) The effect of the recommended minimum upon small, marginal, and financially weak mills. It is here suggested that the paramount and final test to which the Committee was required to subject any recommendation was and is this:

Will it substantially curtail employment?

Most of the information before the Committee, including that on the probable increase in labor costs, was in the form of statistical averages, usually for the industry as a whole. The Committee did not determine—and, judging from the record, made no serious effort to determine—the effect of its recommended minimum, in terms of increased costs, ability to modernize, or in any other relevant terms, upon precisely those establishments which

would be most adversely affected. How many of these weak mills are there? And where are they located? How many would have their costs increased to a point where they could no longer operate? How many people do they employ? How many jobs would be lost if they are forced out of business? Unless the Committee knew the answers to these questions in the case of the mills that would be most adversely affected, how could it possibly determine—as it is required by law to determine—that its recommendation, if given effect, would not substantially curtail employment?

(h) Comparative living costs in the North and South. We know from the record that certain figures compiled by the WPA and the American Federation of Labor were made available to the Committee and that these indicated a relatively slight difference in living costs between the two sections. Significantly, however, they did not give or purport to give—as a subsequent study by the Bureau of Labor Statistics did not give—any comparisons in the case of towns, North and South, of under 5,000 population and in which, testimony in the record indicates, some 200,000 textile workers reside. Similarly, no study was made of living costs, North and South, in textile towns as such. Since Congress has recently abolished differentials in relief payments except when based upon actual differences in cost of living, and a comprehensive study will presumably be made to determine these, we assume that in no event would one agency of the Government proceed to find that substantial differences in living costs do not exist between the North and South until this other agency has made its determination and established its policy. In any event, one of our objections to the recommendation of Industry Committee No. 1 is that no adequate investigation was made of this subject, as no adequate investigation was made of annual, as distinguished from hourly, earnings, North and South.

(i) In view of the mandatory requirement that an Industry Committee shall not recommend—or the Administrator approve—a wage minimum the effect of which would be to substantially curtail employment, we object that Industry Committee No. 1 erred in summarily dismissing, without investigation or due consideration, the possible desirability, if not necessity, for classifications as provided for under Sec. 8 (c) of the Act. It is established by the evidence adduced at this hearing that a 32½-cent uniform minimum will result in an especially severe displacement of certain types of employees, including those in the lowest brackets of skill and efficiency. We object that Congress did not intend, nor does the Act require, that those at the very bottom of the economic scale in this industry should be made the chief victims of the Committee's understandable desire, either for a minimum wage formula of extreme simplicity or to get through with its work and adjourn.

(j) Mr. Barringer testified on yesterday in part as follows:

"Unfortunately, most of our statistical information on the prices of competitive cotton and non-cotton articles is not of recent date. From August, 1933, to January, 1936, when processing taxes were in effect, the Agricultural Adjustment Administration made thorough studies of most of these competitive lines, and placed compensatory taxes upon many of them as an offset to the processing tax on cotton. These studies should be brought up to date.

"We need to determine, if possible, what effect certain cotton price-raising measures will have upon the competitive position of certain cotton goods. We also need to measure the effect of various wage increases upon their competitive position. The unit output of goods per man

hour in competitive industrial uses differs sufficiently from that in the cotton textile industry to make it necessary to approach this problem from the standpoint of changes in unit costs of competitive non-cotton articles resulting from various increases in the minimum wage in these industries. The results of such studies should be applied to maintain the economic equilibrium between cotton products and competitive non-cotton products."

We object, Mr. Administrator, that the Industry Committee gave no sufficient or adequate consideration to those factors just described.

So much for the failure of the Committee to comply with the law by giving due regard to economic and competitive conditions affecting this industry and its ability to absorb increased costs without substantially curtailing employment. I now wish, Mr. Administrator, to enter a further objection to the approval of the recommendation of Industry Committee No. 1 for the reason that the conclusions and determinations arrived at by the Committee are not sustained by the weight of the evidence adduced or considered by it. The burden is upon the Committee, Mr. Administrator, to determine, having due regard to all relevant economic and competitive factors, that its recommendation will not result in a substantial curtailment of employment. I therefore urge the objection before you, based upon the record, that there exists a failure of proof that the recommended minimum will not substantially curtail employment and that the Committee's recommendation is not supported by substantial evidence. We therefore request that you find as a fact that there has been a failure of proof; that the Committee's recommendation is not supported by substantial evidence; and that for this further reason you disapprove the recommendation.

III. Without waiving any of the foregoing, I now come, Mr. Administrator, to the third principal heading under which I wish to urge objections before you at this time. It relates primarily to Sec. 8 (d) of the Act, which provides in part as follows:

"* * * Upon the filing of such report"—i. e., the report of the Industry Committee—"the Administrator, after due notice to interested persons, and giving them an opportunity to be heard, shall by order approve and carry into effect the recommendations contained in such report, if he finds that the recommendations are made in accordance with law, are supported by the evidence adduced at the hearing, and taking into consideration the same factors as are required to be considered by the industry committee, will carry out the purposes of this section; otherwise he shall disapprove such recommendation."

Mr. Administrator, with particular reference to the above-quoted section and to Section 10 (a) of the Act, we desire at this time to enter the following further objections to approval of the recommendation of Industry Committee No. 1:

(a) The Recommendation of the Committee is not supported by the evidence adduced at this hearing. The recommendation, as revealed by the Majority Report, is predicated upon the assumption that a 32½-cent wage minimum, if approved, will not substantially curtail employment. It has not been established by the proponents of this recommendation, upon whom the burden of proof rests, that such minimum will not in fact substantially curtail employment. On the contrary, it has been established by the opponents of this recommendation, that

substantial curtailment of employment, as we believe within the meaning of the Act, will in fact result if this recommendation is approved.

We therefore object that we have again—as in the case of the committee phase of this matter—a failure of proof because the recommendation is not supported by the evidence adduced at this hearing.

(b) While the efforts of the proponents of the recommendation have obviously been to cure the omissions and failures of the Committee to give adequate consideration to the economic and competitive factors hereinbefore enumerated, by introducing testimony as to some of these —as in the case of transportation costs—we must object that the Administrator is not permitted under the law to perform the work of the Committee. He may only approve or disapprove its recommendation. The fact that he is required to give consideration to the same factors required to be considered by the Committee and that he has in fact received testimony from the proponents bearing upon the freight rate question may indicate a recognition on his part that this is a relevant economic or competitive factor which the Committee was required to consider. Our objection is, however, that this and other relevant economic and competitive factors were not adequately considered by the Committee and that the Committee thereby failed to perform its required function. Under the law, the Committee has its duties and functions, as the Administrator has his. Neither may, however, assume or usurp the functions and duties of the other without doing violence to both the intent and letter of the Act.

(c) Referring again to the requirement that the Administrator give consideration to the same factors required to be considered by the Industry Committee, and

without waiving the preceding objection, we object that adequate information has not been adduced by the Administrator at this hearing on the economic and competitive factors enumerated under the second main heading of these objections. We repeat that no duty rests upon the minority or any other dissenting group or individual to prove that the effect of this recommendation, taken in connection with all relevant economic or competitive factors, will be to substantially curtail employment. The burden is upon the Committee in the first instance, Mr. Administrator,—and upon yourself in the second—to establish that it will not substantially curtail employment. We enter the objection that, even had the Committee given adequate consideration to the economic and competitive factors hereinbefore enumerated in discussion of its action, there has been no adequate consideration given to such factors up to now in this hearing.

(d) Section 8 (d) of the Act contains the language "* * * will carry out the purposes of this section." What purposes? I venture to suggest that the purpose Congress had in mind was that of reaching the 40-cent minimum as rapidly as is economically feasible without substantially curtailing employment. We object, Mr. Administrator, that, as the record now stands, not only have the proponents of the recommendation failed to establish in this hearing that the recommendation will not substantially curtail employment, but the overwhelming weight of the evidence is that it w... We accordingly request that the recommendation be disapproved for this further reason.

We specifically object to any interpretation of the Act which would treat unemployment, otherwise substantial, as not substantial for the reason that it was proved only to be local and/or regional. We urge that Congress intended that this Act should be so administered (within

the sole limitation of attaining a 40-cent minimum in 7 years) as not to create substantial unemployment in any locality, State, or geographical region. We further object that the Administrator erred in admitting evidence as to the effect upon employment in any area of a failure to approve this recommended minimum.

IV. I now come to the fourth main heading, under which it is desired to enter and urge before you, Mr. Administrator, further objection to approval of this recommendation. I am by no means certain that the law requires that this type of objection be entered at this time. Nevertheless, the language of section 10 (a) is not altogether clear, and, in any event, we have no objection to making these statements now. On the contrary, we are anxious to avoid any course which might militate against a full and final determination of this case upon its merits. We therefore urge the following additional objections to your approval of the recommendation of Industry Committee No. 1:

(a) In enacting the Fair Labor Standards Act of 1939, Congress provided no sufficient standards for the guidance of the Administrator or Industry Committees, and for this reason the Act iteslf is an unconstitutional delegation by Congress of its legislative powers. We do not discuss whether this failure on the part of Congress to provide sufficient standards for the proper exercise of this power might have been cured had proper standards been established by the Administrator on his own motion. We simply point out and object that no such standards for the proper exercise of this legislative power were in fact established or observed, and request the disapproval of the recommendation for this reason.

(b) According to our view of the requirements of the Fair Labor Standards Act, Mr. Administrator, and of

the defective procedure, omissions and failure of the Committee and the Administrator to comply, up to this point, with the plain requirements of the Act, we are certain that approval by you of this recommendation will result in a violation of the due process clause of the Constitution of the United States. Mill owners and mill workers have a property interest in their plants and jobs.

Moreover, it is apparent from the evidence adduced at this hearing that many mill operators will be unable, if this recommendation is approved, to comply with the provisions of Sec. 10 (b) of the Act. They can no more provide such undertaking than they can pay the 32½-cent minimum. Therefore, they will be deprived of their property, closed up and liquidated and—unless a remedy is found outside the provisions of Sec. 10—without ever having had their day in Court.

Thus is illustrated once more the solemn duty resting upon the Administrator of this Act—not only in the interests of employers and employee, but in the interests of the Act itself—to make as certain as is humanly possible that every step taken and every procedure adopted has clear and unequivocal legal sanction. In the very nature of the case, we are dealing here with the lives and livelihoods of a great many human beings. It is therefore, I respectfully submit, Mr. Administrator, not a situation in which grounds for so-called "test" suits should be lightly provided by those charged with the responsibility of administering this Act in accordance with law. We object that the approval of this minimum, when even the meager requirements of the Act have not been complied with, will almost certainly deprive many persons of property without due process of law.

(c) We do not at this time go into the question of whether the Act itself may be unconstitutional because

it purports to regulate minimum wages for both men and women.

(d) We likewise merely remark that nowhere is the power granted to Congress under the Constitution to regulate production. The framers of the Wage-Hour law obviously did their utmost to bring this whole matter of industrial production within the scope of the power of Congress to regulate interstate commerce. We do not believe they succeeded, but we leave this question as one which may more properly be urged, if and when the necessity arises, in another forum.

(e) It is clear, I think, Mr. Administrator, that, in yet another respect, approval of this recommendation will be in direct violation of the Constitution of the United States. Much of the evidence before the Committee and much of the evidence produced, over our objection, by the proponents of the recommendation at this hearing was designed to establish that such minimum should be approved as a method of equalizing, or standardizing, economic and competitive conditions between regions. It is respectfully submitted that your only authority, Mr. Administrator, comes from Congress—which in turn derives its sole authority from the Constitution. Where, in that document, is there a delegation of power to Congress to enact legislation for the equalizing or standardizing of economic and competitive conditions between regions? We feel that approval of this recommendation would, in effect, be a long step in that direction; that it would be a step wholly without legal or constitutional sanction, so for this reason, also, we enter objection.

(f) Finally, Mr. Administrator, we must challenge yet another phase of the administrative procedure whereby Industry Committee No. 1 reached its determination and recommendation. We have commented

upon the composition of the Committee. Equally disturbing to those who feel that, at least in this situation, the proper function of an agency of government is not to act as judge, jury, and prosecutor is the testimony of Mr. Charles A. Cannon, a member of the Committee, that —

"the work of the Committee was made much harder, and in fact I think their determinations were greatly prejudiced, by the conclusions in the reports which were advocated by members of the staff and the publicity given by a part of the staff to their conclusions. Much of the information submitted by the staff of the Wage and Hour Division was based entirely on theory. Their conclusions were incorrect, and no statement made by them before the full committee was ever adequate to correct misinformation which they had submitted."

I now read, Mr. Administrator, from the testimony of Mr. Robert R. West, also a member of the Committee:

Mr. West was asked this question by Mr. Pitts, counsel for the Committee:

"Q. Statements were made the other day that the employees of the Wage-Hour Division provided inaccurate and distorted information to Committee Number One, is that your opinion too?

"A. Well, of course to a person who is not familiar with the processes of thought and the phraseology of economists and statisticians, and of those better equipped than we, I suppose some statements could be described that way. I don't for a moment impugn the integrity or the mathematical accuracy of the figures, any figures that came within my hearing.

"I question very much the conclusions that were drawn from some of them on the part of the officials,

but I have no complaint to make at all about the way the statistics and such facts as were available were presented to the Committee by the members of the staff of the Wage-Hour Division of the Bureau of Labor Statistics, because presumably the 21 of us on that Committee were moderately intelligent, and if we detected in those statements statements which did not square with our conception of the facts, we were perfectly at liberty at all times to make that deduction and to state our feelings.

"Q. In fact, such statements were made and additional material from time to time supplied, was that not correct?

"A. That is true."

I do not wish to comment upon this testimony of responsible members of Industry Committee No. 1, Mr. Administrator, other than to observe that it raises some extremely serious questions.

(g) I understand that counsel for other groups opposing this recommendation have objected to the composition of the Committee on the ground that the definition of the Industry was improper. I wish to join in that objection.

(h) In conclusion, Mr. Administrator, I wish to state that, in our opinion, the statement made by Mr. McNulty at the opening of this hearing as to its nature and the rules which would govern the admission and exclusion of evidence was correct. We have accordingly acted upon the assumption that the rules there announced would govern the conduct of the hearing and accordingly have made no objection to the introduction of much material and evidence which, under the strict rules of evidence, was inadmissible. We still feel that

the Administrator should have the advantage of all such information which has any bearing whatever upon the present determination.

Certain objections have been made, however, and exception taken by the other side as to some of the evidence which we have introduced, and the Administrator has reserved his decision on various motions to strike. Under these circumstances—and in the event your decision should be to sustain these objections—we wish to request permission to go over the entire record and move to strike all testimony given by the proponents and which, under the same rule, would be inadmissible.

(i) The foregoing objections are *entered on behalf* of the American Cotton Manufacturers Association and each of its members. In case the recommendation of Industry Committee No. 1 is approved, Mr. Administrator, we wish to take exceptions based upon each and all of the objections now or heretofore entered. We also wish to take such exceptions on behalf of each individual member of the Association.

We also respectfully request a reasonable time in which to prepare and file our brief and that, at the time of filing of such brief, or thereafter, that we be granted an opportunity for oral argument.

I now wish, Mr. Administrator, to renew my motion made at the conclusion of the case for the proponents that the recommendation of Industry Committee No. 1 be disapproved.

Administrator Andrews:

Thank you.

OBJECTIONS FILED BY APONAUG MFG. CO., ET AL. BEFORE ADMINISTRATOR.

Mr. Cameron:

Mr. Administrator, I desire to file the objections, in duplicate, which are made on behalf of J. W. Sanders Cotton Mill, Inc., and the Aponaug Manufacturing Company in the proceedings now in progress, and I ask that they be incorporated in the record.

(The document so offered was not read, but is in words and figures as follows, towit:)

"In the Matter of the Hearing on the Question of Whether the Recommendations of Industry Committee No. 1 Shall be Approved or Disapproved Pursuant to the Provisions of the Fair Labor Standards Act of 1938.

"Objections to Approval of the Recommendations Contained in the Report of Industry Committee.

No. 1.

"To Elmer F. Andrews, Administrator of the Wage and Hours Division of the United States Department of Labor, Washington, D. C.:

"Comes J. W. Sanders Cotton Mill, Inc., a corporation, and shows unto the Administrator that it is an 'interested party' in the above matter within the meaning of Section 8 (d) of the Fair Labor Standard Act of 1938; that it now operates a number of cotton mills located in Mississippi, and now employs in the operation of such cotton mills a large number of employees.

"J. W. Sanders Cotton Mill, Inc., objects to the approval and carrying into effect of the recommendation contained in the report of Industry Committee No. 1

and urges before the Administrator the following objections, separately and severally:

"1. That the Administrator has no jurisdiction to consider the recommendation contained in the report of Industry Committee No. 1.

"2. That the Administrator has no jurisdiction to act upon the recommendation contained in the report of Industry Committee No. 1.

"3. That the Administrator has no jurisdiction to approve and carry into effect the recommendation contained in the report of Industry Committee No. 1.

"4. That Industry Committee No. 1 was not appointed and is not constituted in accordance with the provisions of the Fair Labor Standards Act of 1938 and as required by the provisions of such Act.

"5. That Industry Committee No. 1 was not appointed and is not constituted with due regard to the geographical regions in which the industry over which the Committee's jurisdiction extended is carried on as is required by the provisions of the Fair Labor Standards Act of 1938.

"6. That Administrative Order No. 1 under which Industry Committee No. 1 was appointed was not made in accordance with and as required by the provisions of the Fair Labor Standard Act of 1938.

"7. That the report and recommendation of Industry Committee No. 1 are not made in accordance with law.

"8. That the report and recommendation of Industry Committee No. 1 are not made in compliance with the mandatory provisions of the Fair Labor Standards Act of 1938.

"9. That the report and recommendation of Industry Committee No. 1 are not supported by the evidence heard by or presented to such Committee.

"10. That no substantial evidence was heard by or presented to such Committee that supports the report and recommendation of such Committee.

"11. That Industry Committee No. 1, in making its report and recommendation, did not give due regard to economic and competitive conditions in the industry.

"12. That there is no finding or determination by Industry Committee No. 1 that its recommendation, if carried into effect, will not substantially curtail employment in the industry.

"13. That no substantial evidence was heard by or presented to Industry Committee No. 1 that shows that such Committee's recommendation, if carried into effect, will not substantially curtail employment in the industry.

"14. That Industry Commitee No. 1 in making its report and recommendation failed to make findings which are requisite to the validity of such recommendation.

"15. That Industry Committee No. 1 in making its report and recommendation failed to consider or take into account certain relevant factors required to be considered by the provisions of the Fair Labor Standards Act of 1938 in making a recommendation for a wage order under such Act.

"16. That the recommendation of Industry Committee No. 1 contained in its report, if approved by the Administrator, will substantially curtail employment in

violation of the provisions of the Fair Labor Standards Act of 1938.

"17. That Industry Committee No. 1 in making its report and recommendation failed to consider or take into account the factor of competitive conditions as affected by transportation, as is required by the provisions of the Fair Labor Standards Act of 1938.

"18. That Industry Committee No. 1 in making its report and recommendation failed to consider or take into account the factor of competitive conditions as affected by living costs, as is required by the provisions of the Fair Standards Act of 1938.

"19. That Industry Committee No. 1 in making its report and recommendation failed to consider or take into account the factor of competitive conditions as affected by production costs, as is required by the provisions of the Fair Labor Standards Act of 1938.

"20. That Industry Committee No. 1, in making its report and recommendation failed to consider or take into account the factor of wages established for work of like or comparable character by labor agreements negotiated between employers and employees by representatives of their own choosing, as is required by the provisions of the Fair Labor Standards Act of 1938.

"21. That Industry Committee No. 1 in making its report and recommendation failed to consider or take into account the factor of wages paid for work of like or comparable character by employers who voluntarily maintain minimum wage standards in the industry, as is required by the provisions of the Fair Labor Standards Act of 1938.

"22. That the recommendation contained in the report of Industry Committee No. 1, if approved and carried into effect, will substantially curtail employment in the industry contrary to the provisions and policy of the Fair Labor Standards Act of 1938.

"23. That the Industry Committee No. 1 in making its report and recommendation failed to consider or take into account the effect of the recommended minimum wage upon earning pow r, as is required by the provisions of the Fair Labor Standards Act of 1938.

"24. That Industry Committee No. 1 in making its report and recommendation failed to consider or take into account the effect of the recommended minimum wage upon employment.

"25. That no substantial evidence was heard by or presented to Industry Committee No. 1 showing that small or marginal cotton mills will not be forced to discontinue operations if the recommended minimum wage of 32½ cents per hour is approved and carried into effect.

"26. That the only substantial evidence heard by or presented to Industry Committee No. 1 shows that the minimum wage of 32½ cents per hour recommended by said Committee, if approved and carried into effect, will result in the closing of all or substantially all small or marginal cotton textile mills and thereby substantially curtail employment in violation of the provisions of the Act.

"27. That no substantial evidence was heard by or presented to Industry Committee No. 1 affirmatively showing that the minimum wage recommended by the

majority of such committee will not substantially curtail employment in the industry.

"28. The recommendation of Industry Committee No. 1 that a minimum wage of 32½ cents per hour be put into effect in the industry is not sustained by any substantial evidence heard or presented to such Committee.

"29. That no substantial evidence was heard by or presented to Industry Committee No. 1 as to the financial condition of the small or marginal cotton textile mills which would likely or probably be affected by the Committee's recommendation, and there is no substantial evidence as to the effect upon such small or marginal cotton mills of a requirement that they pay minimum wage of 32½ cents per hour as recommended by a majority of such Committees.

"30. That the findings contained in the report of the majority of Industry Committee No. 1 affirmatively show that there are differences in transportation costs with respect to mills located in the different geographical regions in which the industry is carried on and, notwithstanding such differences, the Committee concludes in its report and recommendation that there should be no classifications within the industry, such conclusion being contrary to the provisions of the Fair Labor Standards Act of 1939.

"31. That the findings of Industry Committee No. 1 affirmatively show that there are differences in living costs in different areas in which the industry is carried on and, notwithstanding such differences, the majority of the Committee concludes that it would be impractical and undesirable to set up classifications in the industry with respect to minimum wage rates on the basis

of the differences shown in living costs, such conclusion being in violation of the Act.

"32. That the majority of Industry Committee No. 1 concludes in its report and recommendation that differences in living costs shown to exist in the various geographical regions in which the industry operates are unimportant, such conclusion being in violation of the provisions of the Act which require such Committee to consider competitive conditions as affected by living costs.

"33. That the recommendation of Industry Committee No. 1 contained in its report is based upon the mere opinion and conclusion of the majority of such Committee and is not based upon or supported by any substantial evidence heard by or presented to such committee.

"34. That the report of Industry Committee No. 1 affirmatively shows that the recommendation contained therein is based upon the belief or opinion of the majority of such Commitee rather than upon any substantial evidence supporting such recommendation.

"35. That Industry Committee No. 1 in its report states that 'there is no evidence to show that the recommended minimum will disturb the present regional distribution of the textile industry appreciably', but such Committee made no finding that such recommended minimum will not disturb the present regional distribution of the industry.

"36. That there was no substantial evidence heard by or presented to Industry Committee No. 1 in support of the minimum wage of 32½ cents per hour recommended by the majority of such Committee, and such recom-

mended minimum wage is based solely upon the opinion and belief of the majority of such Committee, unsupported by any substantial evidence of probative value that such recommended minimum wage will not substantially curtail employment in the industry.

"37. That the recommendation contained in the report of the majority of Industry Committee No. 1 should be disapproved by the Administrator for the reasons set forth in the statement submitted to the Administrator by the minority of such Committee, which said statement is incorporated herein by reference with the same effect as if fully set forth herein.

"38. That the recommenation of Industry Committee No. 1, if approved by the Administrator, will create unemployment and substantially curtail employment in the industry in that small cotton mills of limited financial resources will be forced to close or cease operation.

"39. That the recommendation of Industry Committee No. 1, if approved by the Administrator, will create unemployment and substantially curtail employment in the industry in that such recommendation will cause small cotton mills of limited financial resources that are unable to modernize their plant or machinery to close or cease operation.

"40. That the purported findings of the majority of Industry Committee No. 1 with respect to economic and transportation factors constitute nothing more than speculation or hope upon the part of such majority and are not based upon any factual evidence presented to or heard by the Committee.

"41. That the evidence presented to and heard by Industry Committee No. 1 shows without dispute that

larger quantities of cotton goods can be sold at low prices than at high prices and, notwithstanding such undisputed evidence, the majority of the Committee recommends a minimum wage which its report affirmatively shows will cause an increase in the price of such cotton goods.

"42. That there was no substantial evidence presented to or heard by Industry Committee No. 1 which shows that the recommended minimum wage, if approved and carried into effect, would substantially increase the purchasing power of prospective purchasers of manufactured cotton goods.

"43. That the report and recommendation of the majority of Industry Committee No. 1 ignores and disregards the great preponderance of evidence presented to and heard by such Committee to the effect that the recommended minimum wage, if carried into effect, will substantially curtail employment in the industry.

"44. That there is no finding by Industry Committee No. 1 of the existence in said industry of labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers.

"45. That there has been no finding by Congress of the existence in the industry over which jurisdiction was conferred on Industry Committee No. 1 of labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency and general well-being of workers in such industry.

"46. That the report and recommendation of Industry Committee No. 1, if approved by the Administrator, will substantially curtail employment, in that the cotton mills operated by said company located in the State of Mississippi will be forced to cease operation, thereby throwing out of employment a large number of employees now employed in such cotton mills.

"47. That the report and recommendation of Industry Committee No. 1, if approved by the Administrator, will deprive said company of its property without due process of law in violation of the Fifth Amendment to the Constitution of the United States.

"48. That the report and recommendation of Industry Committee No. 1, if approved by the Administrator, will cause the closing and cessation of operation of the cotton mills operated by said company, thereby substantially curtailing employment in the communities in which such mills are located.

"49. That payment by said company to the employees in its cotton mills of the minimum wage recommended by the majority of Industry Committee No. 1 will cause such mills to operate at a great financial loss.

"50. That the report and recommendation of Industry Committee No. 1, if approved by the Administrator, will make it impossible for said company to operate its said cotton mills at a profit, but on the contrary will cause the operation of such cotton mills to be attended with a financial loss.

"51. That the Fair Labor Standards Act of 1938 is invalid for the following reasons:

(a) By such Act the Congress of the United States attempts to delegate legislative power to the Administrator and to the Industry Committee in violation of the Constitution of the United States.

(b) By such Act the Congress of the United States is seeking to exercise powers which are reserved to the States in violation of the Tenth Amendment to the Constitution of the United States.

(c) Such Act deprives said company of its property without due process of law in violation of the Fifth Amendment to the Constitution of the United States.

(d) Such Act, although purporting to be an exercise by Congress of its power to regulate commerce among the several States, is in fact an unconstitutional interference with the right of private employers and employees to contract or enter into agreements concerning wages and hours of employment.

(e) Such Act is invalid in that it is an attempt on the part of the Congress of the United States, under the guise of a regulation of interstate commerce, to deprive said company of its property without due process of law.

(f) Such Act is repugnant to the Constitution of the United States in that it is an attempt on the part of Congress, under the guise of a regulation of Interstate Commerce, to exert power over purely local matters to which the authority of the Congress does not extend.

"Wherefore, said company, to-wit: J. W. Sanders Cotton Mill, Inc., an 'interested person' within the meaning of Section 8 (d) of the Fair Labor Standards Act of 1938, prays that the Administrator will disapprove the recommendation contained in the report of Industry Committee No. 1.

"J. W. SANDERS COTTON MILLS, INC.,
"By (Signed) BEN F. CAMERON,
"Its Attorneys."

Recital.

Like objections were filed by J. W. Sanders Cotton Mills, Inc., Alabama Mills, Inc., and others whose objections may appear in record. (See agreed praecipe for record filed Jan. 5th, 1940.)

FINDINGS AND ORDER OF ADMINISTRATOR.

Wage and Hour Division,
United States Department of Labor,
Washington, D. C.

In the Matter of the Recommendation of Industry Committee No. 1 for Minimum Wage Rates in the Textile Industry.

Findings and Opinion of the Administrator.

Sept. 29, 1939.

This is a proceeding held for the purpose of determining whether the 32½-cent minimum wage recommendation of Industry Committee No. 1 for the textile industry shall be approved and carried into effect.

Industry Committee No. 1 was appointed on September 13, 1938, by Administrative Order No. 1 pursuant to Section 5 (b) of the Fair Labor Standards Act of 1938 to recommend, after investigation, the minimum wage rates to be fixed for the textile industry. The Committee was convened by Administrative Order No. 2 dated September 26, 1938, and commenced its study of conditions in the industry on October 11, 1938. Hearings were held and numerous witnesses were heard on the factors which the Industry Committee is required to take into consideration by the terms of the Act. On March 21, 1939, the Committee tentatively agreed upon a 32½-cent minimum wage rate, but withheld final decision upon the recommendation until after the respective jurisdiction of the Textile and Wool Industry Committees had been defined. On May 22, 1939, the Committee duly adopted a resolution by a vote of 13 to 6 recommending a minimum wage of 32½-cents an hour for the textile industry. The report of the Committee containing its recommendations was filed with the Administrator on May 23, 1939, pursuant to section 8 (d) of the Act. A report of the minority of the Committee was filed on May 22,

1939, and a supplementary minority report by E. L. Foshee was also filed on this date.

On May 27, 1939, the Administrator gave due notice of this proceeding, which was held in Atlanta, Georgia, and Washington, D. C., pursuant to the provisions of section 8 (d) of the Act. The hearing began on June 19, 1939, and was concluded on July 11, 1939. Opportunity for oral argument was given on July 25, 1939, and written briefs were received until August 22, 1939.

I. *Definition of the Textile Industry.*

Administrative Order No. 1 of September 13, 1938, which appointed Industry Committee No. 1, contained a definition of the textile industry. This definition was amended by Administrative Order No. 6 issued December 19, 1938, and was further amended by Administrative Order No. 25 issued May 22, 1939.[1]

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[1] The textile industry as defined in Administrative Order No. 25 is as follows:

"(a) The manufacturing or processing of yarn or thread and all processes preparatory thereto, and the manufacturing, bleaching, dyeing, printing and other finishing of woven fabrics (other than carpets and rugs) from cotton, silk, flax, jute or any synthetic fiber, or from mixtures of these fibers; or from such mixtures of these fibers with wool or animal fiber (other than silk) as are specified in clauses (g) and (h); except the chemical manufacturing of synthetic fiber and such related processing of yarn as is conducted in the establishments manufacturing synthetic fiber;

(b) The manufacturing of batting, wadding or filling and the processing of waste from the fibers enumerated in claude (a);

(c) The manufacturing, bleaching, dyeing, or other finishing of pile fabrics (except carpets and rugs) from any fiber or yarn;

(d) The processing of any textile fabric, included in this definition of this industry, into any of the following products: bags, bandages and surgical gauze; bath mats and related articles; bedspreads; blankets; diapers; dishcloths, scrubbing cloths and washcloths; sheets and pillow cases; table-cloths, lunch-cloths and napkins; towels; and window-curtains;

(e) The manufacturing or finishing of braid, net or lace from any fiber or yarn;

(f) The manufacturing of cordage, rope or twine from any fiber or yarn;

(g) The manufacturing or processing of yarn or thread by systems other than the woolen system from mixtures of wool or animal fiber (other than silk) with any of the fibers designated in clause (a), containing not more than 45 percent by weight of wool or animal fiber (other than silk);

The definition of the industry was made by the Administrator on the basis of a comprehensive investigation conducted by the Bureau of Labor Statistics of the United States Department of Labor. The amendments to the definition were adopted by the Administrator after consideration of the evidence adduced before Industry Committee No. 1 and the recommendations on the definition made by such Committee. In the case of the amendments contained in Administrative Order No. 25, the recommendations on the definition by both the Wool and Textile Industry Committees were considered before a final determination was made.

A. *Fibers and Products Included in the Definition.*

The definition applies to the manufacturing or processing of yarn or thread from the following fibers:

1. cotton.

(h) The manufacturing, bleaching, dyeing, printing or other finishing of woven fabrics (other than carpets and rugs) from mixtures of wool or animal fiber (other than silk) containing not more than 25 percent by weight of wool or animal fiber (other than silk), with any of the fibers designated in clause (a), with a margin of tolerance of 2 percent to meet the exigencies of manufacture."

The problem of woolen mixtures raised by paragraphs (g) and (h) of the Administrative Order was described in a letter of September 13, 1938, from the Administrator to Donald M. Nelson, Chairman of Industry Committee No. 1, which requested the advice and recommendations of the Committee concerning the inclusion, in the definition, of:

"The manufacture and finishing of such yarn and woven goods with such percentage of wool fiber as is so closely related to the operations listed in Order No. 1 as to require similar and simultaneous treatment to avoid conferring competitive advantage and to secure, in so far as practicable, reasonably related minimum wages within the establishment."

The question was, therefore before Industry Committee No. 1 from the commencement of its deliberations. It was also made the subject of a joint study by subcommittees of the Wool and Textile Industry Committees. The final action of Industry Committee No. 1 on the minimum wage recommendation was not taken until the Administrator had issued the definition contained in Administrative Order No. 25. It should also be noted that Industry Committee No. 1's recommendation of a definition was similar to the definition issued by the Administrator and that the recommendation of a definition was adopted prior to the final vote on the minimum wage recommendation.

Footnotes in this opinion make reference for the benefit of the reader to certain relevant portions of the record. They do not, however, constitute all the evidence upon which the findings are based. The record is designated in the footnotes by the abbreviation "R".

2. silk.

3. flax.

4. jute.

5. synthetic fibers.

6. mixtures of the above fibers.

7. mixtures of wool or animal fiber (other than silk) with any of the above fibers if the manufacturing is done by a system other than the wool system and the mixture contains not more than 45 per cent by weight of wool or animal fiber (other than silk).

There is specifically excluded the chemical manufacturing of synthetic fibers and such related processing of yarn as is conducted in establishments manufacturing synthetic fibers.

The definition also applies to the production of the following textile fabrics and products:

1. Fabrics woven from the above listed fibers and from synthetic fibers or mixtures thereof.

2. Fabrics woven from mixtures of wool or animal fiber other than silk containing not more than 25 per cent by weight of such fiber with any of the above listed fibers with a margin of tolerance of 2 per cent to meet the exigencies of manufacture.

3. Pile fabrics manufactured from any fiber or yarn.

4. Net, braid and lace and cordage rope and twine manufactured from any fiber or yarn.

Carpets and rugs are excepted from the fabrics covered by the definition.

1. *Cotton, Rayon and Silk.*

The bulk of the textile industry is included in the categories of cotton, rayon [2] and silk manufactures. The following table shows the establishments, workers and value of the products in these categories as of 1935:

Coverage of Definition With Respect to Cotton, Rayon and Silk.[3]

Products	Number of Establishments	Number of Workers	Total Value of Specified Products
Cotton Manufactures...	1,223	394,404	$1,021,134,000
Dyeing and finishing of cotton, rayon and silk	523	78,585	223,622,000
Rayon manufactures....	447	73,261	206,247,000
Silk manufactures	658	58,089	145,790,000
Total.....	2,851	604,339	$1,596,793,000

The total figures for these branches of the industry should be contrasted with the Bureau of Labor Statistics' estimate of the minimum jurisdiction of Industry Committee No. 1 adjusted to exclude knitted cloth.[4]

Number of Establishments	Number of Workers	Value of Specified Products
3,288	640,678	$1,743,690,000

It has been necessary to include rayon, cotton and silk in one industry because of the competitive interrela-

[2] Rayon is described as "synthetic fiber" in the definition of the textile industry.
[3] Industry Committee No. 1 Exhibit No. 2, p. 9.
[4] Ibid.

tionships of these fabrics. Many products made entirely of rayon compete with many cotton and silk products. Rayon is also used as a mixture with cotton and silk.[5] Although it is true that cotton does not compete to any great extent with silk it competes with rayon which in turn competes with silk.[6] The industry represented by these products therefore presents a problem which requires consideration as a whole. Failure to provide for such consideration would have resulted in possible competitive disadvantages to some of those products.

The unity of this industry is further demonstrated by the convertability and interchangeability of looms in cotton and rayon production.[7] A change in price or cost relationships may therefore determine the extent and direction of the conversion.

The convertibility of rayon and silk looms is even more pronounced. Information furnished by the National Federation of Textile, Inc., an association of rayon and silk mills, for three mills which produce both fabrics shows variations in the production of rayon for the period October, 1937, to August, 1938, ranging from 57 per cent to 89 per cent in one mill, 16 per cent to 60 per cent in another mill, and 22 per cent to 67 per cent in the third mill.[8] The choice between the production of silk and rayon in these mills as well as in the industry depends largely on relative production costs and market conditions for the products.

Irene L. Blunt, Secretary of the National Federation of Textiles, Inc., stated at the public hearing before the Administrator that the definition of the industry had been properly drawn[9] and that there are no longer

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[5] Ibid., p. 12.
[6] R. 198.
[7] Industry Committee No. 1 Exhibit No. 2, p. 12.
[8] Ibid., p. 14.
[9] R. 197.

separate rayon and silk industries but there is a textile weaving industry which uses rayon and silk fibers.[10] A number of opponents of the minimum wage recommendation of Industry Committee No. 1 referred to the competitive relationship of rayon and cotton in describing the economic condition of the cotton goods industry.[11]

The definition excludes "the chemical manufacturing of synthetic fiber and such related processing of yarn as is conducted in establishments manufacturing synthetic fiber" but includes the processing of yarn if conducted in any other type of establishment. This action was taken to minimize overlapping of jurisdiction into industries with unlike processes requiring different types of labor and to avoid cutting across establisment lines. Investigation of the wages paid in rayon chemical plants showed that the exclusion would not place the textile industry at a competitive disadvantage.[12]

2. *Woolen Mixtures.*

The definition of the textile industry was drawn to exclude the woolen industry since the competitive relationships of these industries and the differing nature of the establishments, labor forces and wage structures made it administratively advisable to establish separate industry committees. The committees have made differing wage recommendations—a 32½-cent rate was recommended by Industry Committee No. 1 for the textile industry and a 36-cent rate was recommended by Industry Committee No. 1-A for the woolen industry.

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[10] R. 183, 193.

[11] Testimony of Donald R. Comer (R. 1820, 1821). Testimony of L. T. Barringer (R. 3182-3183, 3186, 3203). Barringer stated that rayon and silk have been substituted for cotton in apparel, and that rayon has made increasing inroads on cotton in such fields as linings, bedspreads, underwear, draperies and auto upholstery.

[12] Industry Committee No. 1 Exhibit No. 2, p. 24.

There is serious competition, however, between the woolen and cotton industries with respect to yarns and fabrics which contain mixtures of both fibers. A determination to place all fabrics and yarns containing wool under the jurisdiction of the Woolen Committee or to place all fabrics and yarn containing cotton under the jurisdiction of Industry Committee No. 1 would have cut across plant lines since both cotton and woolen mills manufacture fabrics and yarns containing these mixtures.

It was therefore decided to establish a distinction between the woolen and cotton industries on the basis of the percentage of wool and in the case of yarns to make a further distinction on the basis of the system used to spin the mixed yarn. This latter factor is available for purposes of distinction since the amount of wool spinning machinery in cotton mills is almost negligible.

Subcommittees of the Woolen and Textile Industry Committee were chosen to study the question of the appropriate division point for the cotton and woolen industries. In view of the inability of the Industry Committees to reach an agreed recommendation,[13] the Administrator decided to follow the NRA definition which appeared to be the most appropriate test even after account had been taken of the changes in conditions which have occurred since the NRA.[14]

3. *Inclusion of Other Fibers and Products.*

Flax is included since its main product, linen, is competitive with cotton in the manufacture of handkerchiefs, sheetings and other products.[15]

[13] See letter from Donald M. Nelson to the Administrator, dated May 22, 1939, in "Administrator's Exhibit No. 6," following minutes of meeting of Industry Committee No. 1 on May 23, 1939.

[14] Industry Committee No. 1 Exhibit No. 2, p. 50, and minutes of Joint Meeting of Industry Committees No. 1 and No. 1-A on May 22, 1939, p. 5.

[15] See Industry Committee No. 1 Exhibit No. 2, p. 11.

Jute has been included because of its competitive interrelationships with cotton in the fields of osnaburgs and twine.[16]

In the case of pile fabrics, the definition covers all types of fibers since it is common practice to use cotton, silk, rayon, wool and hair in the same plant. Investigation disclosed that any other treatment of pile fabrics would have created serious administrative problems.[17]

Similar action was taken with respect to the net, braid and lace and the cordage, rope and twine groups since the plants in these groups also utilize all fibers in the manufacture of their products.

Objection was taken at the public hearing to the inclusion of jute bagging used for covering bales of raw cotton. This business is an outgrowth of the cotton waste and cotton mill by-products business[18] and manufactures a coarse net-like product of jute rove which is woven from waste jute or jute butts.[19] It is true that jute bagging does not resemble a fine textile fabric but the relationships of this product with products covered by the definition require its inclusion. Willard Lewis, President of the Riverside Mills of Augusta, Virginia, and representative of the Institute of Manufacturers of Bagging for Raw Cotton, testified that jute bagging is in some competition with cotton mesh bagging,[20] and that in his own mill the manufacture of jute bagging constitutes only 40 per cent of the mill's revenues. The bulk of the mill's production is in the processing of waste and the spinning of yarn under the waste system, which are

[16] Ibid.
[17] Ibid., p. 35.
[18] R. 2501.
[19] R. 2473.
[20] R. 2506. See R. 2484. It may be noted that the competition of cotton mesh bagging is not substantial although it is being encouraged by the U. S. Department of Agriculture.

under the textile definition.[21] John J. Jenkins, Jr., President of the Dixie Jute Bagging Corporation, testified that his mill is also engaged in the manufacture of jute twine.[22] The evidence produced by the opponents of the inclusion of this product demonstrates that, regardless of its competition with cotton products, it properly comes under the definition of the textile industry because it is manufactured in plants doing other work under the definition.

Carpets and rugs were excluded from the definition because few textile mills are engaged in their manufacture and their competitive relationships are primarily with products which do not come within the scope of the textile industry.

B. *Processes.*

The integration of the spinning, weaving and finishing processes in the textile industry made appropriate their inclusion in a single industry so that the minimum wage recommendation could be made with adequate consideration of competitive relationships.[23]

There has also been included the manufacturing of batting, wadding or filling and the processing of waste as an incident to spinning operations. Objection to the inclusion of waste processing was made by the Textile Waste Exchange of Atlanta, Georgia, which claimed that this process is sufficiently different from the operations in the textile industry to warrant its exclusion from the definition. It appeared from the testimony, however, that the members of the Exchange are engaged in the operation of processing purchased waste which goes primarily

[21] R. 2501-2504.
[22] R. 2518.
[23] See Industry Committee No. 1, Exhibit No. 2, p. 10.

into batting, wadding and filling.[24] The processing of waste is also done by integrated mills. According to the estimate of the representative of the Exchange the integrated mills handle from 7 to 8 per cent of the total waste processed in the United States.[25] Apparently, the processing of waste and the manufacture of batting, wadding and filling is often carried on in the same plant. It was also admitted that a good deal of unprocessed waste, which does not contain the foreign material removed by the processing operations, is used in the batting industry.[26]

From this evidence, it is clear that the decision to include the processing of waste in the definition was appropriate. Exclusion of all these operations would have required segregation of work in a number of integrated plants; inclusion of these operations only when carried on in an integrated plant would have given the companies processing purchased waste a competitive advantage over the integrated plant.

The original definition of the textile industry contained in Administrative Order No. 1 applied to "The manufacturing, bleaching, dyeing or printing of knitted fabrics (other than hosiery or wool and wool mixed overcoatings and suitings) from any fibre or yarn." Upon investigation by a subcommittee of Industry Committee No. 1 and upon consideration of its suggestions by the Adminstrator, decision was made to exclude knitted fabrics from the textile industry definition. It was recognized that a number of knitting mills spin their own yarn, that specialized finishing plants handle knitted fabrics together with woven fabrics and that there is some competition between knitted and woven fabrics. The investigation showed, however, that a minor proportion of the yarn used by knitting mills was spun by

[24] R. 2520, 2540.
[25] R. 2538-2541.
[26] R. 2542.

them and that only a few companies were engaged in both processes. Furthermore, the finishing of knit goods is only a minor part of the commercial finishing business and most knitted fabrics are finished within the knit goods industry. It was also found that knit goods do not compete seriously with woven goods on a price basis even in the field of women's underwear.

Establishments which cut and sew purchased knitted fabric compete with mills which knit the fabric and manufacture it into garments. It was not considered advisable to include the cutting and sewing establishments in the textile definition since they are properly part of the garment making industry. The definition was, therefore, drafted to exclude knitting from the textile definition, and provision was made for handling this problem through different committees.

C. *Further Processing of Textile Fabrics.*

It has been found that considerable proportions of certain textile products such as bags, towels, napkins, and similar articles are produced in the fabric weaving mills.[27] These products have therefore been included in the definition. In order to avoid competitive disadtantage to these mills, paragraph (d) of the definition covers the manufacture of these products even when engaged in by an independent establishment which is not related to a textile mill.

II. *Selection of Membership of Industry Committee No. 1.*

Section 5 (b) of the Act provides that:

"An industry committee shall be appointed by the Administrator without regard to any other provisions of

[27] Administrator's Exhibit No. 6 Vol. I Hearing of Textile Industry Committee, December 14, 1938, pp. 15-22.

law regarding the appointment and compensation of employees of the United States. It shall include a number of disinterested persons representing the public, one of whom the Administrator shall designate as Chairman, a like number of persons representing employees in the industry, and a like number representing employers in the industry. In the appointment of the persons representing each group, the Administrator shall give due regard to the industrial regions in which the industry is carried on."

Pursuant to this section of the Act, there were appointed by Administrative Order No. 1, dated September 13, 1938, seven persons representing the public, seven representing employers in the industry and seven representing employees in the industry. The persons appointed to the Committee are as follows:

Public Representatives:

Donald M. Nelson, Chairman of Industry Committee No. 1, Vice-President, Sears, Roebuck and Co., Chicago, Illinois, a corporation operating retail stores, mail order houses and manufacturing plants which are located throughout the country, Director of the Union Pacific Railroad Co., and other corporations.

Grace Abbott, former chief of the Children's Bureau, United States Department of Labor, and Professor of Public Welfare, University of Chicago, Chicago, Ill.

P. O. Davis, Director of Extension Service, Alabama Polytechnic Institute, Auburn, Alabama.

E. L. Foshee, Iron Rock Oil Co., Sherman, Texas.

Louis E. Kirstein, Vice-President, William Filene's Sons Co., Boston, Mass.; Chairman Industrial Advisory Board of the National Industrial Recovery Administration; Chairman of the Board of

Trustees of the American Retail Federation, and Member of the Government's Special Coal Strike Settlement Commission.

George Fort Milton, President and General Manager, Chattanooga News, Chattanooga, Tennessee.

George W. Taylor, Professor of Industry, University of Pennsylvania, Philadelphia, Pennsylvania, and Impartial Chairman designated to mediate labor disputes in the full-fashioned hosiery industry.

Employer Representatives:

G. Edward Buxton, President, Androscoggin Mills, Providence, Rhode Island.

Charles A. Cannon, President, Cannon Mills Co., Kannapolis, North Carolina.

Robert H. Chapman, Vice-President, Inman Mills, Spartansburg, South Carolina.

John R. Cheatham, President and Treasurer, Georgia Kinkead Mills, Griffin, Georgia.

R. R. West, President, Riverside and Dan River Cotton Mills, Danville, Virginia.

All of the above named employer members are engaged in the manufacture of cotton textiles.

John Nickerson, Cheney Bros., mfrs., Manchester, Connecticut, a company engaged in the manufacture of silk.

Seabury Stanton, Treasurer, Hathaway Mfg. Co., Inc., New Bedford, Massachusetts, a company manufacturing rayon fabrics.

Employee Representatives:

Paul Christopher, Technical Adviser, Textile Workers Organizing Committee, Shelby, North Carolina.

Francis P. Fenton, Director of Organization, American Federation of Labor, Washington, D. C.

Sidney Hillman, Chairman of the Textile Workers Organizing Committee, New York City.
R. R. Lawrence, Southeastern Director, Textile Workers Organizing Committee, Atlanta, Georgia.
Elizabeth Nord, Regional Representative, Textile Workers Organizing Committee, Philadelphia, Pennsylvania.
H. A. Schrader, American Federation of Labor, Washington, D. C.
Emil Rieve, Textile Workers Organizing Committee, Philadelphia, Pennsylvania.

Subsequently on January 4, 1937, Fred Lazarus, Jr., Vice-President and Treasurer, F. & R. Lazarus Co., Columbus, Ohio, Member of the Executive Committee, American Retail Federation, and Allan Barrows, Treasurer, Gosnold Mills Corp., New Bedford, Massachusetts, a company manufacturing rayon fabrics, were appointed to the Committee in place of Mr. Kirstein and Mr. Stanton, respectively, who had resigned.[28]

Testimony was placed in the record with regard to the geographical regions in which the textile industry is carried on. This evidence shows that the Southern Branch of the cotton goods manufacturing business has 73 per cent of the total number of wage earners, 59 per cent of the number of establishments and 70 per cent of the value of the product.[29] In the dyeing and finishing branch of the entire textile industry, including cotton, the Northern States had approximately 75 per cent of the wage earners and accounted for approximately 75 per cent of the value of the product.[30]

The North accounted for the following percentages in the rayon and silk divisions of the textile industry:

[28] R. 2-5.
[29] R. 30.
[30] Ibid.

Percentages of Rayon and Silk in Northern States.[31]

Branch of Industry	Percent of Total Wage Earners	Percent of Total Value of Product
Rayon	71 percent	71 percent
Silk	90 percent	90 percent

The textile industry as defined by Administrative Order No. 25 was distributed as follows between the North and the South:

Geographical Distribution of Textile Industry as Defined in Administrative Order No. 25.[32]

Geographical Region	Number of Establishments	Value of Product	Number of Wage Earners
South	31 percent	51.5 percent	55 percent
North	69 percent	48.5 percent	45 percent

Of the 5 employer representatives of the cotton textile industry, 4 were selected from the South and only 1 came from New England. The representatives for rayon and silk were selected from the North because, as the above table demonstrates, these branches of the textile industry are predominantly Northern.

Of the public representatives, 3 are residents of Southern States. After the resignation of Mr. Kirstein, there were no public representatives from New England.

The employee representatives were selected from national unions organized to represent the interest of workers in every section of the country regardless of the residence of the particular representative or of the workers who are members of the union.

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[31] R. 31.
[32] R. 29.

There was objection by certain manufacturers in the Southwest to the failure to select representatives from that area of the country. Analysis of the census figures indicates that the following proportion of the textile industry is conducted in this region:

Percentages of Wage Earners and Value of Product Represented by the States of Louisiana, Texas, Oklahoma and Arkansas.[33]

Industry	Wage Earners	Value of Product
Cotton goods manufacturing	1.23 percent	1.16 percent
Textile industry as defined in Administrative Order No. 25	.9 percent	.84 percent

The persons selected from the South, in my view, were qualified to represent the interests of the States in this area which are a part of the Southern geographical region of the textile industry. It should be noted, however, that a public member was selected from the State of Texas.

It may be noted that constitution of the Committee in a manner to give proportional representation to those States would have required the appointment of approximately 100 members representing the employers in the industry, 100 representing the employees and 100 representing the public.

The representatives of the Institute of Manufacturers of Bagging for Covering Raw Cotton and the Textile Waste Exchange contended that special representation should have been given these branches of the textile industry. The analysis of the definition of the industry shows that the products manufactured by the members of these trade associations are textile by-products and are properly classifiable as parts of the textile industry.

[33] R. 32, 33, 242.

The persons selected to represent the cotton textile industry were also representative of these branches.

Willard Lewis testified that total employment in the particular section of the textile waste processing business which he represented did not exceed 800.[34] He also stated that as of June 10, 1938, 9 of the 14 plants manufacturing jute bagging employed 1724[35] persons. It would appear that proportional representation of these divisions of the textile industry would have required an even larger committee than was estimated would be required if the claims of the Southwestern cotton textile manufacturers were accepted.

It is my view that the question of the selection of the Committee is not a proper issue for the determination of the Administrator in this proceeding. The foregoing evidence clearly shows, however, that the Committee was composed of an equal number of disinterested persons representing the public, persons representing employees in the industry, and persons representing employers in the industry; that the persons representing each group were appointed with due regard to the geographical regions in which the industry is carried on and that the selection of the Committee was therefore made in accordance with the provisions of Section 5 (b) of the Act.

III. *Procedure of the Industry Committee.*

It has been claimed that the Industry Committee did not give adequate consideration to all the factors relevant to the effect of the 32½ cent minimum wage and that as a consequence the recommendation should be disapproved as not made in accordance with law. Evidence on the question of the topics considered by the Committee was

[34] R. 2538.
[35] R. 2496.

accepted at the hearing subject to general motions of counsel for the Textile Workers Union of America and Counsel for Industry Committee No. 1 to strike all evidence dealing with the procedure before the Industry Committee.

I am inclined to agree with counsel that this issue is not properly before me and that the evidence should be stricken. Nevertheless, because of the importance of the proceeding, I have carefully considered that evidence.

There is abundant evidence in the record of this hearing, particularly the Committee's journal, transcript and report, to show that the Committee gave extensive consideration to the conditions in the industry.[36] Hearings were held before the Committee and its sub-committees for periods of time during the months of October, November and December 1938 and January, March, April and May 1939. Numerous Witnesses were heard and written briefs and statements were received from various groups in the industry. Extensive statistical investigations of wage rates and costs of living were made by the United States Bureau of Labor Statistics, and the Economic Section of the Wage and Hour Division made studies of the effect of proposed minimum wage rates, reviewed data on living costs in different regions of the country and presented information on transportation cost differences. Evidence was also before the Committee on collective labor agreement wage rates, production costs and other factors bearing on the question of the minimum wage rate which should be recommended. The evidence indicates that the Industry Committee considered all this data.

Upon the basis of the record, I find that the Industry Committee has investigated and considered conditions in the industry, including the factors specifically set forth

[36] Administrator's Exhibits 6 and 7.

in Section 8 (b) and (c) of the Act, and has reached its recommendation in accordance with law.

IV. *Effect of the Minimum Wage Recommendation on Employment in the Cotton Textile Industry.*

Under the terms of Section 8 of the Act, the Administrator and the committee are required to consider whether the minimum wage recommendation will not "substantially curtail employment" in the industry, having due regard to economic and competitive conditions. The evidence in the record on this question is directed to the effect of the proposed minimum on (1) aggregate employment in the industry as a whole, (2) aggregate employment in the Southern branch of the industry as a whole, and (3) employment in certain groups of Southern mills.

A. *Effect of the Minimum Wage Recommendation on Aggregate Employment in the Cotton Textile Industry and in the Southern Branch of the Industry.*

1. *Labor Costs and Manufacturing Costs in the Industry.*

An increase in wages may effect employment in an industry through a decline in consumption of the industry's products resulting from an increase in manufacturing costs and a consequent increase in the price of the product. In evaluating the effect of any wage rise on employment, it must be noted that wage rates or labor cost are only one factor in manufacturing cost and that the ratio of labor cost to total manufacturing cost is a significant consideration in determining whether there will be any effect on prices.

In order to ascertain the existing wage structure of the cotton textile industry, the Bureau of Labor Statistics studied a carefully selected sample of 90,000 workers rep-

resenting 25 percent of the employees in the industry. The accuracy of this sample was supported by an extensive survey covering 95 percent of the plants in the cotton textile industry with respect to employment and pay rolls and 80 percent of the plants with respect to weekly hours and hourly earnings.[37]

The Economics Section of the Wage and Hour Division on the basis of the hourly earnings statistics obtained from the study of the Bureau of Labor Statistics, estimated that the increase in labor costs would be 4 percent for the entire cotton textile industry over the costs prevailing on October 24, 1938. This calculation is in general accord with the 4.2 percent estimate made by the Cotton Textile Institute and the 3.8 percent estimate of the Textile Workers Organizing Committee. Application of the 4 percent increase to the average wage rate of 38.4 cents prevailing in August 1938 will result in an average wage for the industry of 39.9 cents after the imposition of the 32½-cent minimum or a 1.5 cent increase in average hourly wage rates.[38]

There was general agreement in the evidence presented at the hearing that the estimate of 36 percent was an outside calculation of the average ratio of labor costs to total costs of manufacture in the cotton textile industry. Application of this percentage to the estimated wage bill in-

[37] R. 14-19. This study is Bulletin 663 of the Bureau of Labor Statistics and has been introduced as Exhibit No. 1 by the Industry Committee. See Ibid., table 5, for report of total employment of 359,200 in the industry as of August, 1938, the date of the study. Also see Ibid., pp. XI, XII.

[38] R. 39, 42. The use of August, 1938, data understates the wage rate structure at the time of the effective date of the Act since 2.3 percent of the employees in the industry were receiving less than 25 cents an hour in August, 1938. (Industry Committee No. 1, Exhibit No. 1, Table 45.) An average wage rate of 39.9 cents per hour is less than the average hourly earnings in this industry during the period April 1937 to June 1938 when the rate ranged from 40.1 cents to 42.4 cents. (Ibid. p. 69.)

[39] R. 46.

creases gives an average estimated increase of 1.44 percent in manufacturing costs for the entire industry.

If calcuated on the basis of the increase which the minimum wage rate represents over the 30 cent minimum which automatically goes into effect on October 24, 1939, there wil be an estimated increase of 2.1 percent in the wage bill of the industry and .76 percent increase in manufacturing cost.[40]

It may reasonably be anticipated that a minimum wage which causes an increase of less than 1½ percent in the average cost of manufacture will not have a serious effect on employment in the industry. If account is taken of the fact that the industry will be required to assume about half of this increase by virtue of the 30 cent minimum wage which goes into effect pursuant to Section 6 of the Act on October 24, 1939, it would seem clear that the increase in the cost of manufacture which is attributable to the minimum wage recommendation will have a negligible effect on the industry as a whole.

2. *Labor Costs and Manufacturing Costs in the South:*

Comparable studies have been made by the Economics Section of the Wage and Hour Division of the effect of the minimum wage recommendation on the cotton textile industry located in the Southern states. These studies have shown that there will be a 6.25 percent increase in the average wage rate which will increase the average hourly wage rate from 36.6 cents to 38.9 cents or an increase of 2.3 cents. In terms of manufacturing costs the rise will be 2.25 percent. When calculated on the basis of the increases resulting from the advance over the 30-cent statutory minimum, the rise will be 2.15 percent in wage rate and .77 percent in cost of manufacture.[41]

[40] R. 42, 119.
[41] R. 39, 42, 119.

These figures show that the recommendation will not have a serious effect on the labor and manufacturing costs in the Southern branch of the industry although the increases will be in excess of those recorded for the entire industry.

3. *Differential Increases in Wage Rates above the Minimum.*

Although an employer in the cotton textile industry is not required by law to raise wages above the minimum prescribed in the wage order in order to maintain existing differentials, there is some tendency for him to do so and the Economic Section of the Division therefore include in its estimates of the effect of the minimum on wage rates an allowance for such increases. This allowance is not an arbitrary figure; it has been calculated on the basis of the experience resulting from the imposition of minimum wage rates under the National Industrial Recovery Act. In the United States as a whole, the impact of the increase in wage rates above the minimum under the NRA, was 13.1% as great as that resulting directly from the minima; in northern mills, it was 8.1% as great; in southern mills, it was 14.4% as great.[42]

It was claimed at the hearing that the NRA experience is not comparable since the Code established a minimum wage rate of 30 cents per hour for the cotton textile industry in the south and permitted the employment of such workers as cleaners and outside laborers at rates not less than 75 percent of the prescribed minimum or 22½ cents.[43]

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[42] R. 42. Industry Committee No. 1. Exhibit No. 4, pp. 4-5.
[43] R. 2015, 2017, 2020.

The contention was made that the differentials above the minimum during the NRA were less than the differentials which will result from a uniform 32½-cent minimum wage since account was taken of the bimodal characteristic of the wage structure in southern mills.[44]

Assuming the existence of bimodality in the South, it must be noted that it is not universal in its operation. The study of the Bureau of Labor Statistics shows that as of August, 1938, 27.4 percent of unskilled male workers who were in the special or "outside" class under the Code received less than 22½ cents per hour, while only 7.9 percent of unskilled male workers subject to the 30-cent rate under the Code received less than 22½ cents.[45] The Bureau's sample of workers in the southern mills, however, contained 7,347 unskilled males subject to the Code and 2,669 in the special category.[46] Calculation shows that there were approximately 580 unskilled males subject to the Code in the less than 22½-cent wage category in contrast to 731 in the special category. Since the Bureau's sample is typical of conditions in the industry, it may be stated that of the total number of male unskilled workers employed in southern mills in August, 1938, who received less than 22½ cents an hour approximately 44 percent would have been subject to the Code and 56 percent would have been in the special category. In the case of unskilled female workers receiving less than 22½ cents per hour, more than 50 percent would have been subject to the Code. The number of employees in this category was approxi-

[44] Elmer Estes, general organizer for the United Textile Workers of America, denied there was a double minimum in the South. (R. 1152.) It may be noted that the Economic Section's calculations probably overstate the increase in wage rates insofar as account has not been taken of the wage rates which will be paid learners. The Administrator is empowered by Section 14 of the Act to grant learners' certificates at wages lower than the applicable statutory minima to the extent necessary to prevent curtailment of opportunities for employment.

[45] Industry Committee No. 1, Exhibit No. 1, pp. 87, 89.

[46] Ibid.

mately 149 subject to the Code and 141 in the special class.[47] It must also be noted that the Bureau of Labor Statistics has stated that there is no evidence of practices existing immediately before the Code to support the differential provided for in the Code between outside workers and cleaners and such groups as filling hands and trimmers and inspectors.[48] A suggestion is made in the Bureau's study that the depression in average earnings was a factor in the lack of differentials prior to the Code but information is supplied which shows that in July, 1938, male laborers who were in the special category were earning about $7.50 per week, while female frame spinners and filling hands who were subject to the 30-cent minimum under the Code averaged about $6.25.[49]

In view of the fact that there will be no legal compulsion to maintain differentials in the mills where the problem may arise, it can be assumed that if an adjustment above the minimum cannot be borne by the individual establishment an effort will be made to meet the situation in a manner which will not require the curtailment of plant operations and employment. It would be unreasonable to assume that closing the plant would ever be adopted as the solution of this problem.

Robert R. West, President of the Riverside and Dan River Cotton Mills, who stated that the cotton textile industry is in no position to raise its entire wage structure in

[47] Ibid., p. 88. Cleaners of machinery, who were held to be subject to the 30-cent minimum by the Code, have not been included in these calculations with respect to male and female unskilled workers since it is the view of the Bureau that a confused situation existed with respect to these employees. Inspection of the available data shows that if these workers had been included in the distribution of employees subject to the Code, pursuant to the Code Authority's interpretation, there would have been a further decrease in the differential between the two categories as of August, 1938. The entire number of workers in the special class in the Bureau of Labor Statistics sample is 3,081, or approximately 1.2% of the total number of employees in Southern cotton textile mills.

[48] Ibid., p. 86.

[49] Ibid., p. 87.

the same proportion as would be brought about by bringing the lower paid group to 32½ cents [50] also testified that his company would not be appreciably affected either in employment or operations by the minimum [51] although his calculations showed that if prevailing differentials over the lowest paid groups were to be maintained in his plant, there would be an increase of 22 percent in labor costs.[52]

No evidence was introduced in the record by the opponents of the 32½-cent minimum to show that after the 25-cent rate went into effect on October 24, 1938, the only employees receiving the statutory minimum of 25 cents were of the same class as the workers placed in the special category under the NRA.

It would therefore appear that the estimate of differentials above the minimum calculated by the Economic Section was substantially accurate and that the estimates of cost increase are not subject to objection on this ground.

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[50] R. 2018.

[51] R. 2046.

[52] R. 2046. Industry Committee No. 1, Exhibit No. 1 states at p. 134 that "If social pressures were to lead to the maintenance of the full difference between the earnings of these groups, the wage increase required by a 30-cent order would be in the order of 5 cents in Southern mills averaging 37.5 to 42.5 cents. This would be an average increase of 12.5 percent for this group of southern integated mills." The analysis goes on to state, however, that this calculation is based upon the extreme assumption that there will not be a tendency for a congestion of the distribution of the wage rates at the minimum, and that this assumption "has no support whatsoever in the experience of the period following the adoption of the code, but which rests entirely upon the supposition that filling hands cannot be hired at the same rate as yard laborers." (Ibid., p. 135.) The permissibility of this supposition would appear subject to question on the basis of the information in this exhibit that in July, 1933, male laborers who were in the special category averaged $7.50 per week, while female frame spinners and fillers who were subject to the 30-cent minimum under the Code averaged about $6.25 (Ibid., p. 87). Furthermore, it should be noted that West testified that the Riverside and Dan River Cotton Mills, which has an average wage rate falling within the 37.5 to 42.5 cent category, would not be appreciably affected by the 32½-cent minimum. There should be contrasted with the estimated increase of 12.5% the calculations in Industry Committee's Exhibit No. 4 (p. 7a). that integrated mills in the South paying average wages between 37.5 and 42.5 cents would have an average labor cost increase not exceeding 2.02%.

4. *Incidence of Technological Improvement on Labor Costs and Employment.*

The calculated increase in average wage rates may be offset to a large extent by increased productivity. The factor which determines whether a business can continue operations at a given price is not the wage rate, but the unit cost of production. A high wage rate structure in a plant may mean lower costs of production if the workers produce proportionately more than low wage employees.

The record shows that there has been a uniform trend of increased productivity per man hour in the cotton textile industry. The following table computed by the Bureau of Labor Statistics shows this trend:

Index of Output per Man Hour in the Cotton Goods Industry.[53]

(Average, 1932 - 100).

Year	Index
1928	85
1930	92
1932	100
1933	105
1934	109
1935	117
1936	127
1937	129

Productivity per man hour increased 49 per cent from 1928 to1936. It increased 27 per cent from 1932 to 1936.

The increase in productivity from 1933 would warrant a minimum wage in the South of approximately 36 cents per

[53] Industry Committee No. 1 Exhibit No. 1, p. 47.

hour assuming that price conditions were as favorable as in the NRA period.[54]

Robert R. West conceded that the impact of the 32½ cent minimum might be absorbed in the same manner as was the experience during the NRA.[55] This testimony was given with reference to statements he had made that although a 37½ per cent increase in labor costs was anticipated as a result of the NRA requirement that the same wages be paid for 40 hours as had been paid formerly for 55 hours, experience showed that within 18 months after the introduction of the 40-hour workweek, the actual increase was only 12 per cent.[56] The difference in the percentage was explained by "the utilization of improved machinery, better arrangement of processes, and application of skilled labor, and the more adequate scheduling of the flow of production and better selection of raw materials." [57]

H. M. Jones, President and Treasurer of Waverly Mills, Incorporated, Laurinburg, North Carolina, testified that his mill which now pays an average wage slightly over 28 cents per hour in contrast with the general Southern average of 36.6 cents and which has less than 15 per cent of its employees earning more than 32½ cents will be able to meet the 32½ cent minimum by installing automatic spoolers and long draft roving frames. The average wage of the mill will be 33.5 cents when the 32½ cent minimum is paid. He stated there would be a 12½ per cent reduction in employment as a result of the new machinery. The modernization program, however, had been prepared and

[54] R. 684, 1197.
[55] R. 2042.
[56] R. 2041. L. E. Bowen testified that the Tifton Cotton Mills of Tifton, Georgia, absorbed the NRA labor cost increases by the installation of machinery which increased productivity 40 per cent.
[57] R. 2041-A. Although West's testimony was given with reference to a reduction in working hours, the experience is comparable, since an increase in the average wage rate resulted.

would have taken from two to three years. The inauguration of the minimum necessitated the more rapid execution of the program.[58]

It has been contended that the minimum wage will induce the installation of labor saving devices which will result in unemployment. The evidence shows that there is a constant evolutionary process of modernization going on in the cotton textile industry entirely apart from legislative increases in labor costs. This industry is highly competitive with a consequent incentive toward the continued reduction of costs.[59]

The representatives of the United Textile Workers of America testified that they recognized that the displacement of labor by the introduction of new machinery or the increase of the work load was a continuous process and would operate regardless of the existence of minimum wage laws. It was their view that the problem raised by modernization programs was to obtain a share of the increased productivity for the workers and secure a voice in the assignment of increased work loads.[60]

Russell Fisher, President of the National Association of Cotton Manufacturers, testified that it was the experience of many manufacturers that total employment was not permanently decreased by the installation of modern machinery, but that jobs were provided for the displaced employees elsewhere.[61]

The evidence clearly shows that the small percentages of labor cost increase which will result from the 32½ cent minimum will be largely offset by the normal increase in.

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[58] R. 1654-1657.
[59] See R. 2183, 2184, 130.
[60] R. 1113, 1120-1123, 1131, 1141, 1149.
[61] R. 353. See R. 274.

productivity and that the increase in productivity will not cause substantial curtailment of employment.

5. *Conditions in the Cotton Textile Industry.*

It has been seen that the 32½ cent minimum wage rate involes a relatively small increase in manufacturing costs which will be reduced by normal increase in output per man-hour. The employment effects of a change in unit costs of production will depend on the economic and competitive conditions in the industry.

a. *Profits and Prices in the Cotton Textile Industry.*

The evidence introduced at the hearing shows that the cotton textile industry has a production capacity which is in excess of the peak demands and that it is carrying much obsolete equipment. It is indicative of this situation, that in April 1937, one of the months of peak production in the history of the industry, there were used not more than 24,727,000 spindles although the industry had 27,067,000 spindles in place at the end of the month.[62] The total number of cotton spinning spindles in place decreased from 37,586,000 in 1926 to 26,372,000 in 1938.[63] George P. Clark, Vice-President of the Rhode Island Textile Association stated that it has been estimated that the industry has an excess capacity of 2,000,000 spindles and the rate of decline is 1,000,000 spindles per year.[64]

It also appears that even with the decline in spindlage there is much obsolete equipment in the industry.[65] Charles

[62] Industry Committee's Exhibit No. 1, p. 22.
[63] Ibid., p. 20.
[64] R. 663. J. E. Serrine, an industrial engineer and director in many southern cotton textile mills, testified that a committee was established to administer a program to curtail the production of print cloth by 25 per cent for a period of three months. R. 2180-2181. See R. 1328.
[65] R. 903.

A. Cannon estimated that 12,000,000 to 13,000,000 spindles in the industry are in various stages of obsolescence.

The decline in spindlage has not resulted from a decreased use of cotton. In 1937 when spindles in place had declined to 26,982,000, there was a cotton consumption of 7,950,00 bales [67] in contrast to a consumption of 6,455,000 bales in 1926 when there were 37,586,000 spindles in place.[68] It has been estimated that 41,000,000 active spindles would have been required to process the 1937 cotton consumption had the operating standards of 1922-1923 prevailed.[69] The increased efficiency of spindle operation and the increased number of machine hours resulting from the introduction of the double and triple shift have been primarily responsible for the decrease of spindles in place.[70]

Although the industry has been carrying excess capacity, there was a 2.7 per cent profit on the average total textile investment of cotton manufacturing companies for the two and one-half years period, January 1933 to June 1936, which was studied by the Federal Trade Commission.[71] In

[66] R. 1579.
[67] Industry Committee No. 1, Exhibit No. 1, pp. 21, 23.
[68] Ibid.
[69] Ibid., p. 22.
[70] Ibid., p. 24.
[71] Ibid., p. 31. Industry Committee No. 1 Exhibit No. 1 (Bulletin No. 663, Bureau of Labor Statistics), states at p. 31 that "During the past several decades the industry has, even in prosperous years, been faced with large amounts of idle equipment. Under these conditions the significance of a single figure of percentage profit or loss on aggregate textile investment is doubtful. Idle equipment is obviously held at a loss. To carry such equipment as a charge against the industry's income for long periods of time is to burden the active equipment with charges which make it extremely difficult to realize a profit on the textile investment. Such a procedure is justified only so long as it is assumed that such idle equipment will be called into use at some future time. There is, however, and has been, for years, equipment in the industry on its way to the junkpile. To charge losses on this equipment against the industry in arriving at an estimate of net return on textile investment may be to say the industry operated at a loss, whereas the same volume of business with the same prices, and costs limited to the operating equipment alone, or to the equipment which was likely to be needed in the future, might show a profit or a substantially smaller loss."

the peak period July to December 1933 the following rates of return on average total textile investment were recorded: [72]

Type of Companies	*Rate of Return*
Spinning and Weaving	9.16%
Spinning	8.14%
Weaving	10.17%

The industry has suffered deficit years, but it appears from the evidence that the companies which continue in existence are able to increase their surplus sufficiently during the profitable years to carry over the period of decline.

The profit and loss figures which were introduced at the hearing with respect to the relative position of the North and the South show that the profit status of the industry has been depressed by the earning record of the mills located in the North. The data, which has been taken from the Federal Trade Commission's study of earnings in the cotton textile industry, is as follows:

Rate of Return or Loss,[73]
(* = Loss.)

Period	North	South
January—June 1933	0.62	6.48
July—December 1933	6.84	13.82
January—June 1934	0.02*	8.07
July—August 1934	6.10*	0.10*

Except for the last half of 1934 when there was a general strike in the industry and the early part of 1935, 60 to 82% of the reporting companies showed a net profit

[72] Ibid.
[73] National Association of Cotton Manufacturers Exhibit No. 8.

on sales from January 1933 to June 1936. The most efficient companies showed profits ranging from 10 per cent to more than 30 per cent, and more than half of the companies reporting profitable operations realized net profits on sales in excess of 5 per cent.[74]

The witness generally agreed that 1937 was a profitable year for the industry, but testified that there has been a steady decline in mill margins since that time.[75] The Bureau of Labor Statistics' study of the Industry stated that as of November 1938 mill margins appeared to be close to the costs of the most efficient mills and indicated that prices would soon have to rise.[76] After that date mill margins declined further, but there was testimony that shortly before this proceeding an advance began in the prices of various cotton textiles.[77] W. Ray Bell stated that since the end of May, when the margins had reached the bottom in many divisions, there has been an improvement in business and that if general conditions improve the cotton textile industry has a good chance to improve its position.[78] Mrs. Margaret Mager testified that she recognized that there had been an 8.8 per cent increase in the price of print cloth in the 30 days preceding the hearing.[79] There was no evidence that these increases were in anticipation of any wage order under the Act and I conclude that those increases were entirely independent of the 32½-cent minimum.

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74 Ibid., p. 32.

75 R. 104, 1434. The mill margin is the difference between the selling price of a given cloth construction and the cost of raw cotton required for its manufacture. It is not a profit margin but, when costs are constant, it reflects the profit situation of the industry. (Industry Committee's Exhibit No. 1, p. 37.) Mill margins may not be reliable indications for a single date, since the quotations may not represent any volume of sales. (Testimony of W. Ray Bell President, Association Cotton Textile Merchants of New York, R. 1898.)

76 Industry Committee No. 1 Exhibit No. 1, p. 41.

77 R. 76, 1214, 1922.

78 R. 1904.

79 R. 2937.

If the price structure of the cotton textile industry continues to improve, it is clear that there will be no difficulty experienced in the absorption of the increased cost of manufacture occasioned by the imposition of the 32½-cent minimum wage rate. Even at the prices which were prevailing at the time of the hearing, however, the increase in unit cost of production which might result from the 32½-cent rate is too small to warrant an appreciable effect on employment in the industry or in the Southern Branch thereof.

b. *Nature of the Demand for Cotton Textile Products.*

Whether the wage increase will result in decreased employment depends largely on the effect of the minimum wage on retail prices. It was testified at the hearing that the 6.25 percent average increase in southern labor costs would result in a 2.75 percent increase in the price of cotton shirts, on the assumption of a constant profit margin for each agency in the successive processes of finishing the gray goods, manufacturing the shirt, and selling it at retail. On the assumption of a 10 percent increase in labor cost it was calculated that the increase in retail price would be 4.4%. According to Tolles, the 10% increase would be the maximum for any one of that group of higher wage mills which employ more than 95% of all the workers in the industry.[80]

Testimony was given that it is likely that a portion of the increase may be absorbed at the various stages through which the textile fabric moves since there are conventional price levels which will not be affected by minor variations in cost.[81] Absorption will be facilitated, moreover, in cases of fixed price apparel and other products through quality-of-product manipulations by the manu-

[80] R. 50-53.
[81] R. 54.

facturer. S. L. Hoffman, a manufacturer of dresses retailing at the price of one dollar, testified that increases in cost are met by making minor variations in the construction of the dress which permits continued sales at the standard price.[82]

Where the textile is only part of the finished product which is sold to the consumer as in the case of cotton linings in shoes, the ultimate increase in price will be further reduced.[83]

The evidence introduced in the record shows that the type of demand which exists for cotton textile products is not of a nature which will decline appreciably if there is a small increase in price. The sales volume of textiles which are used for industrial purposes is not affected by an increase in the price of the textiles since the demand is determined by the demand for the finished product.[84] In the case of utility fabrics, demand is determined by the need for replacement and variations in price will only vary the times at which the sales are made.[85] Many items of apparel which are manufactured out of cotton are also purchased in accordance with considerations of serviceability.[86] It has been estimated that 40 percent of the cotton consumed in the United States is produced for industrial and agricultural purposes, 20 percent for household use, and 40 percent for wearing apparel.[87]

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[82] R. 247-258.
[83] R. 1413.
[84] Ibid.
[85] R. 1414.
[86] R. 1415.
[87] R. 60. Recent studies by the Bureau of Labor Statistics have shown that "the most important single factor in determining cotton textile consumption for apparel and household furnishings is the amount of income of low-income groups." (Industry Committee No. 1, Exhibit No. 1, p. 62.) The quantity and quality of cotton goods bought by families with annual incomes of 500 to 1,000 dollars increases many times when the income of the family reaches 2,000 dollars. It is apparent that for this group of purchasers, family income, not the price of the article, measures the volume of purchases made. Ibid., pp. 62-64.

Russell Fisher, President of the National Association of Cotton Manufacturers, testified that in an ordinary year the variation in the price of raw cotton may be 8 or 10 times as great as the increased cost resulting from the increase of the minimum wage rate to 32½ cents.[88] It was his opinion that if the industry can continue in the face of cotton price fluctuations of 100 percent as was experienced from August, 1936, to the date of the hearing, it would not be seriously affected by the increased minimum wage.[89]

Fisher indorsed the view that volume of sales is most satisfactory in the cotton textile industry when prices are moderate and that low prices do not make for high volume. A stable price structure is much more likely to result in increased volume.[90] Paul E. Crocker, Vice-President and Controller of the Pepperell Manufacturing Company, stated that although the minimum wage rate will affect prices it will not affect sales adversely.[91]

c. *Competition of Substitute Fibers.*

Although demand may not decrease because of resistance to slight price increases, account must be taken of the possibility of substitution of competing products. These products compete with cotton at a number of points and have been increasing in volume of sales in recent years.

Rayon, which competes with cotton in the apparel and hosiery industries, has increased its world production from 18,000,000 pounds in 1911 to 2,000,000,000 pounds in 1938.[92] Raw silk delivered to United States mills increased from 28,500,000 pounds in 1920 to 56,600,000 pounds in 1937.[93] In

[88] R. 348.
[89] R. 349.
[90] R. 349-350. See R. 385.
[91] R. 477.
[92] R. 1820.
[93] Industry Committee No. 1 Exhibit No. 1, p. 3.

1932 less than 500,000,000 pounds of jute and jute products were imported by the United States in contrast to over 1,000,000,000 pounds in 1937.[94] String manufactured from jute is competitive with cotton string.[95] There have been significant increases in the use of paper which is competitive with cotton in the fields of bags, napkins, towels and similar fields. The value of paper bag production increased from $45,000,000 in 1921 to nearly $79,000,000 in 1937.[96] Paper towels have increased in value from $3,800,000 in 1925 to $12,100,000 in 1937,[97] and the value of paper napkins has increased from $2,200,000 in 1925 to $11,000,000 in 1937.[98]

Although there has been an increase in the use of competing products, the amount of cotton consumption has not declined. In 1920 cotton consumption, which is the most accurate indication of textile activity, was 2,828,100,000 pounds; in 1938 it was 2,904,000 pounds.[99] The 1937 consumption of 3,657,100,000 pounds was a record high and represented an increase of 829,000,000 pounds over 1920.[100] It further appears that cotton consumption has in general varied with the movements of total industrial production in the United States.[101] It, therefore, appears that the cotton textile industry, while sharing its place in the American market with competing products, has increased its total production.

The Bureau of Labor Statistics suggests that many of the competing products have expanded the market and that their rise has not been completely at the expense of cotton.[102] In many cases the shift which has occurred

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94 R. 1780.
95 R. 1775.
96 R. 1427.
97 Testimony of L. T. Barringer. Exhibit No. 11.
98 Ibid. Exhibit No. 12.
99 Ibid. Exhibit No. 2.
100 Ibid.
101 Textile Workers' Union of America. Exhibit No. 1, R. 3267.
102 Industry Committee's Exhibit No. 1, p. 61.

has been due to the expression of consumer preference, which would be operative regardless of small price variations in the competing products. The most significant illustration of this preference is in the field of women's hosiery.[103]

There is sufficient evidence to show that the competitive relations of cotton textiles and such products as rayon, silk, jute and paper, is not in such a state of balance that small price variations have a substantial effect on the sales of cotton textiles. Otherwise, the wide variations in the price of raw cotton would have completely destroyed those sections of the cotton textile industry which consider themselves subject to the competition of substitutes.

d. *Competition with Imported Cotton Textiles.*

The possibility of substantial competition from imported cotton textiles is remote. According to Bulletin 663 of the Bureau of Labor Statistics the United States is on a net export basis in the cotton textile industry. The data for the Census Year 1935 shows imports of countable cloth amounting to approximately 62,100,000 yards as against a total domestic production of 6,596,000,000 yards and exports of 182,700,000 yards. Imports of yarn for 1935 amounting to 2,150,000 pounds were a fraction of total production and a small proportion of the exports amounting to 8,112,000 pounds.[104] There was apparently some disturbance in particular division of the cotton textile industry as a result of Japanese competition, but this situation was remedied by the adoption of a quota agreement which limited Japanese exports to the United States to a maximum of 255,000,000 square yards for the years 1937 to 1939. Although Japan could export 180,-

[103] See Exhibit No. 5, testimony of L. T. Barringer.
[104] Industry Committee No. 1. Exhibit No. 1, pp. 56-57.

000,000 square yards to the United States in 1937, it did not reach the quota but exported only 106,214,000 square yards. As of November 1938 exports from Japan were even less than for the year 1937.[105]

6. *Experience Under NRA and Under Collective Labor Agreements.*

The experience of the cotton textile industry and its branches under the national minimum wage regulations of the NRA and under collective bargaining agreements is indicative of the probable effect which the proposed minimum wage will have upon the industry and its branches.

a. *Effect of NRA Minimum Wage Rates on Employment.*

There was no dissent expressed by any party at the hearing to the statement that the increases in wages resulting from the Cotton Textile Code did not curtail employment in the cotton textile industry or in the Southern branch of the industry.[106] It was stated, however, that the experience of this period is not relevant since the NRA caused a general increase in buying power throughout the country.[107]

Although the conditions during the NRA period and the present are not completely comparable, it must be noted that the increase in wages resulting from the Code was much greater than the increase which will result from the imposition of the 32½ cent rate. The following table shows the distribution of wages in the Southern cotton textile industry prior to the adoption of the Code:

[105] Ibid. p. 59.
[106] R. 875, 1019, 1099, 1123.
[107] R. 430, 1431, 1479, 1515.

Average Hourly Earnings in the Cotton Textile Industry in the South, July, 1933.[108]

Average Hourly Earnings (in cents)	Percent Employees
2.5 — 4.9	0.2
5.0 — 7.4	.9
7.5 — 9.9	2.7
10.0 — 12.4	9.3
12.5 — 14.9	15.8
15.0 — 17.4	15.9
17.5 — 19.9	15.7
20.0 — 22.4	12.3
22.5 — 24.9	8.2
25.0 — 27.4	5.2
27.5 — 29.9	3.3
30.0 — 32.4	4.3
32.5 — and over	6.2
	100.0

These figures show that 89.5 percent of the cotton textile workers in the South received less than the 30 cent minimum prescribed by the Code. 72.8 percent received less than the 22½ cent minimum for "outside laborers and cleaners." 13.7 percent received less than 12½ cents per hour. Only 6.2 percent received 32½ cents per hour or more. In contrast to these figures, in August 1938, 55.8 percent of the cotton textile workers in the South received 32½ cents per hour or more and only 6.5 percent received less than 22½ cents per hour.

It has been estimated that the increase in average wages in the Southern cotton textile industry resulting from the NRA was 73 percent or approximately twelve times as great an increase as the 6.25 percent estimate of increase

[108] Industry Committee No. 1, Exhibit No. 1, pp. 119 and 84.

for the South which will result from the 32½ cent minimum wage rate.[109]

It also appears that an additional increase of approximately 10 percent was made in wages during the NRA which brought the prevailing minimum wage in the South up to 33 cents an hour.[110]

The contention that NRA conditions are irrelevant cannot be accepted since it appears that many mills retained the Code minima after the invalidation of the NRA. Charles A. Cannon, President of the Cannon Mills, who appeared in opposition to the Industry Committee recommendation testified that:

"In spite of the very unsatisfactory market conditions during the last year, a very large percentage of the textile employees are still above the NRA Code wages. With the 30 cent minimum effective in October, there will be more nearly a uniformity of wage scale than has ever existed in the textile industry." [111]

With due allowance made for the price boom during the NRA, it appears that the capacity of the Southern cotton textile mills to absorb the wage increases resulting from the Code and in many instances to maintain such wages after the termination of the NRA shows that

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[109] R. 348, 685, 1197, 2032.

[110] R. 680, 2196, 3039.

[111] R. 1536. See R. 1634. 24.2% of the employees in the Southern cotton textile industry received less than 30 cents an hour as of August, 1938 (Industry Committee No. 1 Exhibit No. 1, p. 84). Presumably, this percentage would have decreased as a result of the imposition of the 25-cent minimum in October, 1938.

Wage cutting, of course, occurred in many mills as a result of the decision invalidating the NRA. C. W. Mizell, President of the Opp Cotton Mills and the Micholas Cotton Mills, located in Opp, Alabama, testified that immediately after invalidation his mills reduced the minimum wage to $1.55 for a day of 10 to 12 hours (R. 2673). See R. 3069.

it has the capacity to carry the small increase contemplated by the minimum wage recommendation.

b. *Minimum Wage Rates in Collective Labor Agreements.*

The Act permits the use of wage rates in union agreements in analogous industries as evidence from which to infer the validity of the fixing or denial of classifications in the industry which is being studied. In the present proceeding, union minimum wage rates have been submitted for a number of branches in the textile industry. It would seem clear that such rates can be considered under the statute as a basis for judgment of the validity of the minimum wage recommendation for the industry as a whole.

A table showing the rates applicable to various sections of the cotton textile branch is as follows:

Minimum Wage Rates Established in Various Sections of the Cotton Textile Industry by Collective Labor Agreements.[112]

Section of Industry	*Minimum Wage Rate*
Cotton Textiles[113]	34.4 cents in the North.
Cotton Narrow Fabrics	Slightly higher than cotton textiles but not specified.
Cotton Padding[114]	48 to 60 cents.
Bags	40 cents for women; 50 cents for men.
Bandage and surgical gauge	35 cents—40 cents.
Dishcloth, scrubbing and wash cloths	35 cents.

[112] R. 676-678.
[113] See R. 277, 292, 332, 300, 394 and R. 1102, 1138, 1144, 1247.
[114] R. 306.

It was the opinion of George Baldanzi, Executive Vice President of the Textile Workers Union of America, who placed a number of the collective agreement rates in evidence that "only the sub-standard employers paying wages far below those prevailing in their industry will have to raise wages." [115]

It would seem clear from the evidence in the record that these are collective labor agreements in the industry which specify minimum rates equal to or in excess of the recommendation.

On the evidence relating to the experience under the NRA and under collective labor agreements, I find that there will be no substantial curtailment of employment in the cotton textile industry or the Southern branch thereof.

7. *Conclusion.*

It is apparent that no investigation of the effect of a minimum wage recommendation on employment can produce an exact numerical prediction of the level of employment which will exist during the period in which the minimum wage will be operative. Examination of the records of employment in previous years shows that average yearly employment in the cotton goods industry during the four year period 1933 to 1937 varied from 368,900 in 1935 to 422,100 in 1937, a range exceeding 50,000 employees. Average monthly employment during this period ranged from 306,200 in March 1933 to 445,800 in April 1937, excluding September 1934 when there was a gen-

[115] R. 678.

eral strike in the cotton textile industry which reduced employment to 215,200.[116]

[116] Industry Committee No. 1 Exhibit No. 1, Table 5. The complete record of employment in the cotton goods industry, 1933-1938, is as follows:

Month	1933.	1934.	1935.	1936.	1937.	1938
			Employment.			
January	319,400	410,900	402,900	377,700	433,000	364,900
February	316,800	430,800	403,400	376,400	440,000	361,400
March	306,200	443,600	397,200	376,900	443,100	364,000
April	312,400	443,600	379,900	372,400	445,800	350,300
May	327,100	434,300	362,300	372,400	445,300	340,600
June	390,500	401,600	349,000	373,800	434,300	335,800
July	432,100	391,900	336,700	384,400	429,900	345,500
August	441,400	375,500	333,600	396,300	425,000	359,200
September	432,500	215,200	347,700	402,500	414,400	366,700
October	437,800	398,500	361,400	409,100	395,400	.....
November	421,000	395,900	372,900	417,100	383,900	.....
December	408,200	402,900	379,500	425,000	374,600	.....
Average	379,600	395,400	368,900	390,400	422,100	

Furthermore, there may be wide variations in employment which are attributable to factors other than labor costs. For the period January 1937 to August 1938 when employers were not subject to any Federal minimum wage requirements, employment decreased from a high of 445,300 to a low of 335,800.

Upon consideration of all factors bearing on the effect of the 32½ cents minimum wage recommendation on aggregate employment in the cotton textile industry and the Southern branch thereof and having due regard to economic and competitive conditions, I find that this rate will not substantially curtail aggregate employment in the cotton textile industry or in the Southern branch thereof.

B. *Effect of the 32½-Cent Rate Upon Low Wage Mills and Upon Small Mills in the South.*

The evidence in the record shows that the minimum wage rate recommended by Industry Committee No. 1

will have its greatest effect on certain mills in the South which are at present paying low wages. In examining this effect it must be noted that even if the Committee's recommendation were disapproved, these low wage rate mills will be required to meet a 30-cent minimum wage rate on October 24 and consequently a number of them may be compelled to make readjustments in production methods independently of this wage order.

1. *Increase in Labor and Manufacturing Costs in Group of Low Wage Southern Plants Paying Average Wages of Less Than 30 Cents As of August, 1938.*

The Economic Section of the Wage and Hour Division has calculated the cost increases resulting from the minimum wage recommendation for Southern mills classified in accordance with their average hourly wage rates. The effect of the 32½ cent minimum wage rate on integrated mills is tabulated as follows:

Percentage Increases in the Wage Bills and Manufacturing Costs of Groups of Integrated Mills in the South (classified on the basis of their average hourly earnings) Resulting from the 32½ cents Minimum Wage Recommendation.[117]

Average Hourly Earnings in Cents	20.0 & under 25.0	25.0 & under 30.0	30.0 & under 32.5	32.5 & under 35.0	35.0 & under 37.5	37.5 & under 40.0	40.0 & under 42.5	42.5 & under 45.0	45.0 & under 50.0
Labor Cost	29.79%	18.21%	9.72%	5.97%	3.59%	2.02%	1.75%	.51%	.80%
Manufacturing Cost..	10.72%	6.56%	3.50%	2.15%	1.29%	.73%	.63%	.18%	.29%

The cost increases in addition to those involved in meeting the 30 cents statutory minimum are estimated as follows:[118]

Average Hourly Earnings in Cents	20.0 & under 25.0	25.0 & under 30.0	30.0 & under 32.5	32.5 & under 35.0	35.0 & under 37.5	37.5 & under 40.0	40.0 & under 42.5	42.5 & under 45.0	45.0 & under 50.0
Labor Cost	10.42%	7.69%	5.38%	3.42%	2.15%	1.20%	.65%	.29%	.41%
Manufacturing Cost..	3.75%	2.77%	1.94%	1.23%	.77%	.43%	.31%	.10%	.15%

[117] Industry Committee No. 1, Exhibit No. 4, p. 7 (a).
[118] The estimates are calculated from Table 9 on p. 116, Ibid.

The effect of the minimum on Southern spinning mills will be slightly less than the effect on Southern integrated mills. The following table shows the effect of the 32½ cent minimum wage on groups of Southern spinning and integrated mills combined:

Cotton-Manufacturing in the South.[119]

Percentage Distribution of Southern Workers by Groups of Plants and Percentage Increase in the Wage Bill for These Plants.

Average Hourly Earnings Per Establishment August, 1938	Percentage of Southern Workers in each group Spinning and Integrated Mills Combined	Estimated percentage increased in the Wage Bill resulting from the establishment of a 32.5-cent minimum
20 —24.9 Cents	2.4%	29.57%
25.0—29.9 Cents	4.6	17.86
30.0—32.4 Cents	7.6	8.93
32.5—34.9 Cents	17.7	5.41
35.0—37.4 Cents	22.7	3.18
37.5—39.9 Cents	17.7	1.92
40.0—42.4 Cents	20.9	1.75
42.5—44.9 Cents	3.8	.51
45.0—49.9 Cents	2.4	.80

The distribution of the establishments and employees in the Southern branch of the cotton goods industry studied by the Bureau of Labor Statistics is as follows:

[119] Industry Committee No. 1, Exhibit No. 7.

Average Hourly Earnings in the Southern Branch of the Cotton Goods Industry. August 1938.[120]

Average Hourly Earnings in Cents	Number of Establishments	Number of Employees	Cumulative Percentage of Total Number of Employees
Less than 20.0	6	1,211	0.5
20.0 — 24.9	28	4,714	2.4
25.0 — 27.4	28	6,108	4.8
27.5 — 29.9	32	5,547	7.0
30.0 — 32.4	69	18,944	14.6
32.5 — 34.9	109	44,248	32.3
35.0 — 37.4	137	56,902	55.0
37.5 — 39.9	67	44,297	72.7
40.0 — 44.9	89	61,723	97.4
45.0 — 49.9	14	6,003	99.8
50.0 — 54.9	3	354	99.9
55.0 and over	2	134	100.0
Totals	584	250,185	

In view of the lesser effect of the minimum wage recommendation on spinning than on integrated mills, it is appropriate to apply the distribution of earnings in the entire cotton goods industry in the South, as shown in the above table, to the cost increases in integrated mills. Thus more than 93 percent of the employees in the Southern branch of the cotton textile industry were working in mills which paid an average wage rate of 30 cents an hour or more and mills in this group will have their average labor costs increased by less than 10 percent as a result of the minimum wage recommendation. The increase in the average manufacturing cost of these mills will be 3.5 percent or less. If calculated on the basis of the increase resulting from the Industry Committee's recommendation over the 30 cent statutory minimum, these mills will have their labor costs increased by ap-

[120] Industry Committee No. 1, Exhibit No. 1, p. 74.

proximately 5.38 percent or less and their manufacturing costs by approximately 1.94 percent or less.

The mills paying an average wage of less than 30 cents an hour employ 7 percent of the Southern cotton textile workers, and will undergo average labor cost increases ranging from 18.21 percent to 29.79 percent. This group employs only 5 percent of the workers in the entire cotton textile industry. In terms of increases in costs of manufacture, the range will be from approximately 6.56 percent to 10.72 percent. Calculated on the basis of the 30 cent minimum as a comparative standard, the labor cost increase will range from approximately 7.69 percent to 10.42 percent and the increase in the cost of manufacture will range from approximately 2.77 percent to 3.75 percent.

Opponents of the recommendation have stressed the fact that as of August, 1938, 44.2 percent of all Southern employees in the cotton goods industry were paid wages of less than 32½ cents per hour.[121] The study of the plant distribution of Southern Cotton textile workers which is set out above shows, however, the only 14.6 percent of the total number of workers in the industry were employed in mills paying average wage rates of less than 32½ cents an hour and that more than half of this 14.6 percent were employed in establishments paying average wage rates from 30.0 to 32.4 cents per hour.

The determining factor of the effect of the minimum wage recommendation on employment will, of course, be the cost position of the establishments in the industry rather than the number of employees who may be receiving less than the minimum. Many of the employees receiving substandard wage rates are employed in mills which are relatively unaffected by the recommendation

[121] R. 2833.

and can, therefore, increase wages without an effect on employment. It may also be noted that 45 percent of the Southern cotton textile workers receiving less than 32.5 cents per hour are paid wages of 30 cents or over.[122]

The fact that a mill has a low wage schedule does not necessarily mean that it has a low degree of efficiency. Tolles cited a study prepared by the Bureau of Labor Statistics from a special tabulation of the Census of Manufactures which showed that some low wage mills achieve an average or better than average output per hour and hence have extremely low labor costs. The lowest average labor cost per pound of carded cotton yarn was found in mills paying wages 22 percent lower than the average of the mills studied.[123] This view was confirmed by Paul R. Christopher, a technical expert of the Textile Workers Union of America.[124]

It may also be noted that low wage mills on the whole have labor costs which are a smaller percentage of total manufacturing costs since they generally produce a coarser variety of goods. The significance of this factor is stated in Bulletin 663 of the Bureau of Labor Statistics as follows:

"Any change in wage rates will more seriously affect manufacturing costs in those instances [products] where labor costs are large. In this connection, it should be borne in mind that, in precisely those cases where labor costs are a large portion of manufacturing costs, wages tend to be above minimum levels and fewer employees will be effected (sic) by the establishment of a minimum wage." [125]

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[122] Industry Committee No. 1, Exhibit No. 1, p. 84.
[123] R. 72.
[124] R. 1330.
[125] Industry Committee No. 1, Exhibit No. 1, p. 34.

Manufacturing costs of the low wage mill may be reduced, as in the case of the industry generally, by modernization of plant machinery and improvement of efficiency. The operation of technological improvement in the case of the Waverly mills which has been discussed previously in the section on aggregate employment in the Southern branch of the industry, shows that there is an available means for small low wage mills to meet cost rises.

Upon consideration of the extent of increase in the labor and manufacturing costs of the low wage group of mills in the South, the number of workers employed in such mills and all the factors bearing on the effect of the increase in costs on employment, I find that there will be no substantial curtailment of employment in this group of cotton textile mills, and that any unemployment which may result will not cause substantial dislocation of employment in the cotton textile industry.

2. *Effect of the Minimum Wage on Employment in Small Southern Mills.*

A group of cotton textile mills in the South which operate plants containing less than 25,000 spindles entered objection on their own behalf to the approval of the Industry Committee's recommendation. Under the Act the consideration of the wage order must be made on an industry basis. Differential rates cannot be established for individual mills; nor is it permissible to disapprove a minimum wage recommendation because of the effect the recommended rate may have on particular mills.

The application of the small Southern mills is here considered from the standpoint of whether the minimum wage will result in any substantial dislocation of employment in the industry.

A small mill is not necessarily marginal. It has been contended, however, that mills of smaller capacity suffer disadvantages which would make the minimum wage rate more onerous for them. Discounts for volume utilization of power or carload shipments of supplies cannot be obtained. Marketing is done through other agencies which increases the cost of distribution. Investment cost per spindle is greater and the unit cost of supervisory personnel may be more than in large mills because smaller volumes are handled.[126]

It was the opinion of Hyman L. Battle, Treasurer and Manager of the Rocky Mount Mills, Rocky Mount, North Carolina, that small mills would not suffer as a result of the minimum and that they can compete with large efficient mills if they have good management.[127]

There is apparently some confusion as to the point at which a mill can be termed small and therefore subject to the disadvantages claimed by the witnesses appearing at the hearing. A questionnaire was submitted to 483 mills in the South having less than 25,000 spindles by a committee which presented the case for such mills at the hearing. It appeared from the list of 98 mills which responded, however, that in a number of instances mills which responded to the questionnaire were owned by a single interest. The Alabama Mills, for example, accounted for 10 mills of less than 25,000 spindles, but the total spindlage was 110,000.[128] The Aponaug Manufacturing Company and J. W. Sanders Mills which are closely related have 110,696 spindles.[129] In such cases it would appear that some of the disadvantages claimed for small mills would not be present. A central clerical force or selling arrangement would be feasible for such mills and would place them in the same position with respect to these factors as single mills having their total spindlage.

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[126] R. 2733, 2840-2842.
[127] R. 419, 432, 433.
[128] Textile Workers' Union of America, Exhibit No. 9.
[129] R. 2979.

The study made of the 98 mills by Mrs. Margaret Mager, research consultant to the Committee representing small Southern cotton textile mills, showed that the average wage rate of the reporting mills was 28.6 cents in August 1938 and 31 cents in May 1939.[130] According to Mrs. Mager's calculations, this represented a wage increase of 8.4 percent.[131] There was, however, no serious decline in employment, the reports showing a decrease of only nine-tents of 1 percent.[132] Mrs. Mager's calculations also showed that a 32½-cent minimum wage rate would result in a 13.5 percent increase in the wage bill of May 1939.[133] Applying the highest labor cost percentage obtained from the questionnaire, which was 29.3 percent,[134] there would be an indicated increase of only 4 percent in total manufacturing costs over the May 1939 figures.

The returns from the questionnaire will appear to weight the results in the direction of lower wages. It may be expected that the 98 mills replying to the questionnaire sent to 483 plants would be the establishments most affected by the order. Furthermore, it appears that the largest percentage of returns was received from the lowest wage states. The following table shows the number of returns from the various Southern states and the cotton textile wage rates in those States:[135]

State	Number of small mills	Number of Replies	Average wage rate in the cotton goods manufacturing industry
Alabama	43	26	34.8
Georgia	67	26	36.7
Mississippi	7	7	30.9
North Carolina	112	31	37.6
South Carolina	43	5	36.8
Other States (Arkansas, Texas, Virginia)	..	3	...

130 R. 2782.
131 R. 2781.
132 Ibid.
133 R. 2833.
134 R. 2940.
135 R. 110-111, 2913.

It will be noted that the highest percentage of returns was received from the States of Mississippi and Alabama which have the lowest wage rates.

The reports of the Federal Trade Commission which distinguish between small and large mills on the basis of investment show mills with a small investment may make a high rate of return. In the period January to June 1936, for example, mills having textile investments between $100,000 to $199,999 obtained a return from total textile income of 9.20 percent while mills having an investment of $12,800,000 or more showed a return of only 3.99 percent.[136]

Witnesses who appeared at the hearing in opposition to the recommendation gave testimony which shows the probable effect of the 32½-cent minimum rate on employment in small textile mills as defined by the Southern group. In two instances, testimony was given with respect to marginal mills which, it developed on questioning, had found it necessary to liquidate prior to the formal adoption of the minimum wage recommendation by Industry Committee No. 1.[137] The testimony of a number of the witnesses showed average wage rates which indicated that the 32½-cent minimum would not have an appreciable effect upon employment in their mills.[138] From all the evidence in the record, it appears that modernization programs will displace only moderate percentages of employees. This is not contradicted even by the testimony of the witnesses of the small mill group appearing in opposition to the recommendation whose estimates of displacement are as follows: 75 out of 600[139]; 106 out of 552[140]; 25 out of 200[141]; 20 out of

[136] Industry Committee No. 1, Exhibit No. 27d, Appendix p. 13.
[137] R. 2449-2451, R. 1863-1871. Also see R. 1626, 1631.
[138] R. 2212, 2697, 2724.
[139] R. 1655, 1656.
[140] R. 2662.
[141] R. 1888-1889.

315[142]; 125 out of 1353.[143] The evidence in the record, offered to show that existing governmental and private credit agencies are not in a position to finance sound modernization programs in textile mills, is not convincing. Even in the few cases where the minimum rate is likely to have an appreciable effect it would appear that the mills can continue to operate if price conditions improve.

I conclude, therefore, on the basis of all the evidence that there will be no substantial curtailment of employment in the small Southern cotton textile mills as a group and that such unemployment as may result will not cause substantial dislocation of employment in the cotton textile industry.

Viewing, therefore, all the evidence adduced at the hearing relating to the effect which the 32½-cent rate will have on the cotton textile industry, the Southern branch thereof, the low-wage mills, and the small mills, I find that no substantial dislocation of employment in the cotton textile industry will result and that, having due regard to economic and competitive conditions, the proposed minimum will not substantially curtail employment in the cotton textile industry or in any definable group of plants or regions in the industry.

V. *Effect of the Recommendation on Employment in Other Divisions of the Textile Industry.*

The most seriously affected division of the textile industry as defined in Administrative Order No. 25 is cotton goods manufacturing. The other divisions of the industry have for the most part a higher wage structure and will be subject to a much lesser degree of adjustment occasioned by the minimum wage recommendation. The chief

[142] R. 1834.
[143] R. 2979, 2986.

opposition to the recommendation came from cotton textile manufacturers and the evidence in the record was, therefore, primarily directed to the effect of a 32½-cent minimum wage on this branch of the industry.

Tolles testified at the hearing on the basis of his study of wage rates and conditions in the textile industry that the effect of the minimum wage will be smaller on the other branches of the textile industry than on cotton textiles.[144]

A. *Rayon and Silk.*

Tolles' opinion with reference to the rayon and silk division of the textile industry was supported by Irene L. Blunt, Secretary, National Federation of Textiles, Inc., of New York. She was of the opinion, based on a questionnaire study of members of the Association and her general knowledge of conditions that there would be no substantial curtailment of employment in this division as a result of the minimum wage recommendation.[145] A similar opinion was expressed by Abraham Brenman, Counsel for the Silk Commission Manufacturers Association of Paterson, New Jersey,[146] and J. Linzee Weld appearing on behalf of the National Association of Cotton Manufacturers.[147] No objection to this part of the Industry Committee recommendation was formally entered by any party to the proceeding.

Collective labor agreements in this division have established minima of 35 to 40 cents for silk and rayon weaving and 32½ to 37½ cents for the throwing branch:[148]

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144 R. 37-38.
145 R. 198.
146 R. 519.
147 R. 153.
148 R. 676.

The average hourly wage rate in the rayon and silk division, according to the Bureau of Labor Statistics, is 42.2 cents per hour.[149] Weld estimated average hourly wage rates in various sections of the country as follows: New England, 45.1 cents; Pennsylvania, 42.1 cents; and the South, 39.5 cents.[150] He also testified that the increase in price resulting from the application of the minimum wage to the Suncook Rayon Mills, of which he is treasurer, would be 1/100 cent per yard.[151] Miss Blunt stated that her questionnaire study which was participated in by a small number of the mills in the Federation showed estimates of increased cost ranging from ½ to 1½ percent.[152]

It appears from the evidence that the marginal mills in this division are generally in according with the recommendation.[153]

B. *Window Curtains.*

The New England Curtain Manufacturers' Association appeared in opposition to the recommendation, apparently on the basis that the 32½-cent rate would require substantial increases in the price of curtains.

Testimony was introduced at the hearing that New England has one-fourth to one-third of the curtain market and that the bulk of the production is carried on in New York where the prevailing minimum wage ranges

149 R. 37. Brenman testified that a minimum wage of 32½ cents per hour is paid by the employers in his Association to 25 percent of the employees. 75 percent of the employees receive higher wages ranging up to $18 per week. (R. 515.) The average is 37½ cents per hour. (R. 518.)

150 R. 152.

151 R. 155.

152 R. 189.

153 R. 190, 195, 514. J. E. Surrin conceded that northern mills may be affected by Southern rayon competition. (R. 2202.)

from 32½ cents to 40 cents per hour.[154] There are collective agreements in the industry which are above the prevailing minima.[155] No objection was entered by any other companies in the window curtain manufacturing business.

The representative of the New England Association testified that the labor cost in this business is 10 to 15 percent of manufacturing costs.[156] The effect of a small increase in labor costs, therefore, will be negligible.[157]

C. *Dyeing and Finishing of Cotton Textiles, Rayon and Silk.*

As of February 1939 the average wage rate reported by the Bureau of Labor Statistics in the dyeing and finishing branch of the textile industry was 53.8 cents per hour.[158] Collective labor agreements in this branch specified minimum wage rates ranging from 48 cents to 66 cents an hour.[159] According to the National President of the Federation of Dyers, Finishers, Printers and Bleachers of America, affiliated with the Congress for Industrial Organization, 74.6 percent of the branch is organized and 89 percent is paying a wage in excess of 40 cents per hour.[160] An instance was cited of a collective labor agreement negotiated with a company doing business in Richmond, Virginia, which specified a minimum wage rate of 55 cents per hour.[161]

Harold Korzenik, counsel to the National Textile Processors Guild, a group of commission finishers, stated that in his opinion the minimum wage recommendation would not substantially curtail employment in this branch of the textile industry.[162]

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154 R. 945.
155 Ibid.
156 R. 956.
157 R. 957.
158 R. 37.
159 R. 676, 1299.
160 R. 1300.
161 R. 1302, 1307.
162 R. 874.

D. *Jute and Jute Bagging for Covering Raw Cotton.*

The testimony given at the hearing indicates that the jute branch of the textile industry will apparently meet the minimum wage without much difficulty. It was testified that the average wage in the branch is approximately 52 cents per hour [163] and that a collective labor agreement rate has been fixed at a 32½ cent minimum.[164]

There is a favorable tariff on jute twine [165] which is in an advantageous competitive position with reference to other twines.[166]

Objection to the recommendation was entered by that section of the jute branch which is represented by the Institute of Jute Bagging for Covering Raw Cotton.[167] Inclusion of jute bagging in the definition of the textile industry has been determined to be proper on a plant basis.

A witness opposed to the recommendation testified that his average wage rate was 30 cents per hour.[168] That the increase in cost which might otherwise result from increases in wages can be borne by at least those members of the textile industry who in addition to manufacturing jute bagging for covering raw cotton also manufacture other products is shown by the fact that the average wage in the jute branch of the textile industry is approximately 52 cents per hour.[169] Furthermore, the in-

[163] R. 181.
[164] R. 677.
[165] R. 2518.
[166] R. 1772-1788, 2518.
[167] There are about 1000 employees engaged in the manufacture of jute bagging for covering raw cotton. (R. 2496, 2508.) This represents approximately one-fifth of the employment recorded by the 1935 census for jute goods. (Industry Committee No. 1, Exhibit No. 4, p. 4.)
[168] R. 2486.
[169] R. 181.

creases in efficiency which resulted from the 25-cent minimum wage indicate that further increases in efficiency will tend to offset increases in cost resulting from the 32½-cent minimum wage.[170]

E. *Other Sections of the Textile Industry.*

With the exception of cotton waste processing, which is discussed subsequently, objections were not entered against the application of the minimum wage rate to other sections of the textile industry, and evidence was placed in the record to show that there were collective labor agreements in establishing a minimum wage of 40 cents or more for the cordage and twine branch of the textile industry;[171] 37½ cents an hour in the linen branch;[172] and a weekly wage in the skilled section of the lace branch of $50 to $60 and $22 a week for auxiliary employees.[173]

F. *Conclusion.*

I conclude that there will be no substantial curtailment of aggregate employment in any of these branches of the textile industry and that there will be no substantial dislocation of employment in these branches.

VI. *Conclusion on Effect of Minimum Wage Rates on Employment in the Textile Industry As Defined in Administrative Order No. 25.*

Upon the basis of the evidence and my findings with respect to the effect of the minimum wage rate on employment in cotton textile manufacturing and in other

[170] R. 2509. See R. 2514.
[171] R. 677.
[172] R. 677.
[173] R. 917.

sections of the textile industry as defined in Administrative Order No. 25, I hereby find that the minimum wage recommendation of Industry Committee No. 1 will not substantially curtail aggregate employment in the textile industry or in any branch or section thereof, and will not cause substantial dislocation of employment in the said industry or in any of its branches or sections.

Upon the whole record I find that the recommendation of the Committee that a 32½-cent minimum wage rate is the highest minimum wage rate for the textile industry which, having due regard to economic and competitive conditions, will not substantially curtail employment in the industry, is supported by the evidence adduced at this hearing.

VII. *Uniformity of the Minimum Wage Rate Recommended for the Textile Industry.*

The recommendation of a uniform minimum wage rate for the textile industry raises the question of whether classifications should have been established pursuant to Section 8 (c) of the Act. This section directs the industry committee to recommend such reasonable classifications as it determines to be necessary for the purpose of fixing the highest minimum wage rates for each classification which will not substantially curtail employment in the classification and will not give a competitive advantage to any group in the industry. It is further provided that no classification shall be made "solely on a regional bases" but consideration shall be given among other relevant factors to the following:

(1) Competitive conditions as affected by transportation, living, and production costs;

(2) The wages established for work of like or comparable character by collective labor agreements negotiated between employers and employees of their own choosing; and

(3) The wages paid for work of like or comparable character by employers who voluntarily maintain minimum wage standards in the industry.

Industry Committee No. 1 was presented with a request pursuant to this section of the Act for a classification which would establish a differential of 2½ cents under the basic minimum in favor of the Southwest territory as defined by the Interstate Commerce Commission.[174] E. L. Foshee, the public member proposing the classification was the only representative voting for the motion which was opposed by the other committee members present at the meeting including all the Southern employer members.[175] There was no further motion presented to the Industry Committee for a differential in favor of the textle mills located in the Southern states.

It appeared at the hearing that Kemp Lewis, President of the American Association of Cotton Manufacturers which opposed Industry Committee No. 1's recommendation, was present at the meeting of the Industry Committee at which Dr. Murchison, President of the Cotton Textile Institute stated that:

"As an industry we are opposed to the establishment of such classifications. We believe that the Act will be successful to the degree that its application is made uniform and simple. The determination of such classifications and the minimum rate for each classification according to the formula provided in Section 8 is a task

[174] Journal, Industry Committee No. 1, March 21, 1939, pp. 2, 3.
[175] Ibid.

of overwhelming dimensions in industries as large, as widely dispersed, and as heterogeneous as the textile industries. We believe the administrative and enforcement problems arising from such classifications can be avoided, and the purposes of the Act achieved if the minimum wage is considered with due regard to present standards and is made uniform for all the mills in the industry." [176] No objection was made to the statement although the Association is a member of the Institute which spoke on behalf of all its constituents. Lewis stated at the hearing, however, that he now thought Dr. Murchison's position was a mistake.[177] Robert R. West, a member of Industry Committee No. 1, Vice-President of the American Association of Cotton Manufacturers and a member of the Executive Committee of the Cotton Textile Institute testified that he was still in agreement with Dr. Murchison's statement and that he was not requesting either occupational differentials or a differential between the North and the South.[178] The Association apparently adopted a resolution in its April 1939 meeting opposing the Industry Committee's wage recommendation but did not urge the establishment of a differential;[179] nor did the President of the Association ask for a differential in his direct statement at this hearing.[180]

A. *Living Costs.*

In order to obtain adequate information on the question of living costs the Bureau of Labor Statistics of the

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[176] R. 1490.

[177] R. 1492 Charles A. Cannon stated on cross-examination that he thought a differential should be considered if the basic minimum wage for the textile industry was established at a rate above 30 cents per hour. (1572.)

[178] R. 2028-2030.

[179] R. 1422.

[180] A differential was argued for at the hearing by the Southern States Industrial Council, an organization of some 2000 industrial concerns devoted to the furtherance of the industrial development of the South. (R. 2234.) E. J. McMillan, President of the Council, stated that only a small number of textile employers belong to the Council since they have their own Association. (R. 2239.)

United States Department of Labor, which is the Federal Agency engaged in the study of prices and the establishment of cost of living indices, made a special investigation of 5 Northern and 5 Southern cities ranging in population from 10,000 to 25,000 to ascertain the cost of a WPA maintenance budget,[181] which includes food, clothing, shelter, and miscellaneous expenses. The Bureau also computed changes in living costs in 22 cities previously surveyed by the WPA in order to bring the cost of living information for these cities down to December 1938.[182]

The study shows that the average annual cost of living for all 32 cities was only 4.6 percent higher for the North than the South.[183] The cost of living in the North was 5.7 percent higher than the South for the cities ranging in population between 25,000 and 3,000,000 and 1.4 percent higher for the cities of 10,000 to 25,000 population.[184]

The range between the highest and lowest cost city in each geographical area was much larger than the average North-South difference. In the North, New York City had a cost of living which was 22.9 percent higher than the cost of living in Hanover, Pennsylvania. In the South, Baltimore, Maryland was 12.6 percent higher than Sherman, Texas.[185] Moreover, the lowest cost city as well as the highest cost city was found in the North. With a higher degree of variation within the regions than between the regions, it would appear that a lower wage rate established on the theory of a general differential in the cost of living would result in the payment of lower real wages in some points of the lower-wage-rate geographical region.

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181 Industry Committee No. 1, Exhibit No. 10, p. 2.
182 Ibid. p. 1. This study was also submitted to the Industry Committee for its consideration.
183 Ibid. p. 4.
184 Ibid.
185 Ibid. p. 6.

W. M. Adamson, a statistician on the staff of the Bureau of Business Research and a member of the University of Alabama faculty, gave testimony intended to show that the cost of food is lower in the South than the North. Adamson relied on a study which was issued in January 1939 by the Bureau of Home Economics of the United States Department of Agriculture. The study was based on dietary records obtained during the period December 1934 to February 1937 by the Bureau of Labor Statistics in its study of income and disbursements.[186] The Bureau of Home Economics made no independent investigaton of new facts but merely analyzed existing records for dietary purposes.

This study shows that, on an expenditure of $1.25 to $1.87 per person weekly for food, 1 percent of the families in the South received good diets, 28 percent fair diets and 71 percent received poor diets. In contrast 91 percent of the Northern families expending this sum for food received poor diets and 9 percent received fair diets.[187] In the $2.50 to $3.12 expenditure group, 23 percent of the Southern families received good diets and 42 percent received fair diets. 32 percent of the Northern families in this category received fair diets and 5 percent received good diets.[188] In evaluating this evidence account must be taken of the fact that the study was made on the basis of nutritive rather than dietary standards.[189] Illustrative of this distinction is the statement in the study that:

"The consumption of all fats was lowest among families in North Atlantic cities, with average purchases of 40 pounds a person a year and highest in the South with

[186] Textile Workers Union of America, Exhibit No. 5, pp. 1, 2.
[187] R. 2403.
[188] R. 2404.
[189] R. 2558.

averages of 62 pounds for white families and 70 pounds for Negro families. Butter purchases were highest in North Atlantic and Pacific cities, with averages of 21 and 22 pounds a person a year, respectively. Southern white families bought an average of only 8 pounds of butter but they bought from two to four times as much lard and salt pork as other white families." [190]

The test for determining the cost of living in the different geographical areas to which the recommendation will apply is the monetary sum required to purchase an equal standard of living including equally-desirable food from the standpoint of the consumer. Although regional variations in types of consumers goods may be taken into account it would not appear permissible for the purposes of this Act to place one region on a standard which determines adequacy of diet merely by the chemical ingredients of the food.

Adamson also relied on the statement in the study of the Bureau of Home Economics that an inexpensive type of adequate diet could have been bought for $2.45 a person a week for white families in the North Atlantic States and $2.20 for the same group in the East South Central States.[191] This statement was not made for the entire Southern area but applied only to the cities of Birmingham, Mobile and Memphis.[192] Furthermore, this estimate may not be typical since the study shows that in the $1.25 to $1.87 food expenditure group, 34 percent of the East South Central families received a fair diet or better, whereas only 10 percent of the families in South Atlantic States received fair diets and 9 percent of the North Atlantic families were receiving fair diets.[193]

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[190] Textile Workers Union of America, Exhibit No. 5, p. 97. See Ibid. p. 81.
[191] R. 2399.
[192] Textile Workers Union of America, Exhibit No. 5, p. 5.
[193] Ibid p. 74.

The Bureau of Labor Statistics' study previously discussed shows that "the cost of food for the *maintenance budget* differs only slightly between regions." [194] According to this study, food cost averages 1.2 percent less in the North than in the South. I conclude, therefore, upon all the evidence in the record that the cost of food does not differ appreciably between the North and South.

The 4.6 percent general differential in the cost of living between the North and South, which is shown by the Bureau of Labor Statistics' study, was computed after full consideration had been given to the South's advantage in such items as clothing, housing, furnishings, fuel and miscellaneous expenses. Account was taken of differences ranging from 2.1 percent in the item of furnishings to 20.9 percent in the fuel, light, and refrigeration group. The total effect of these differences was limited, however, because of the proportion of the budget which these items absorb.[195]

Evidence was also produced by opponents of the recommendation to show that Southern families were able to save on lower incomes than Northern families to prove that the cost of living is lower in the South.[196] It was stated, for example, that 18 percent of the white families earning as little as $250-$499 per year in middle-sized cities in the Southeast have incomes exceeding expenditures, whereas none of the Northern families in this income category saved.[197] In view of the fact however, that families were included whose incomes exceeded expenditures by a few dollars and the lack of information as to whether the families in the South saved because

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194 Industry Committee Exhibit No. 10, p. 11. It may be noted that Adamson's criticism of the Bureau of Labor Statistics' cost of living index is apparently directed at all the indices which are now available. (R. 2398).

195 Industry Committee's Exhibit No. 10, pages 11 through 13.

196 R. 2416 et seq.

197 R. 2418.

they spent less or because they got more for their money, it would not appear that this type of data furnishes a basis for judgment as to costs of living.

Upon all the evidence, and particularly upon the study submitted to the Industry Committee, I find that living costs do not vary substantially between regions and do not affect competitive conditions in the industry between these regions.

B. *Transportation Costs.*

1. *Evidence on Transportation Cost.*

The effect of transportation costs upon various geographic groups within the textile industry was made the subject of elaborate and extensive testimony at the hearing. Expert witnesses appeared on behalf of the National Association of Cotton Manufacturers,[198] the American Cotton Manufacturers' Association,[199] and the North Carolina, South Carolina, Georgia and Alabama Manufacturers' Associations.[200] Exhibits were placed in the record showing actual freight rates for shipments of raw materials, mill supplies and textile products to and from more than 300 representative destinations and ship-

[198] Mr. James P. Harrington, a member of the Auxiliary Committee of the New England Freight Association (testimony at R-523-549); Mr. M. L. Hatch, traffic manager of the National Association of Cotton Manufacturers (testimony at R. 549-569); Mr. A. H. Ferguson, manager of the Traffic Bureau of the Chamber of Commerce at New Bedford, Massachusetts (testimony at R. 569-586); Mr. Harold D. Arnold, manager of the Textile Traffic Association in Providence, Rhode Island, and traffic manager of the Fall River Chamber of Commerce (testimony at R. 586-597; and Mr. James H. McCann, transportation manager of Associated Industries of Massachusetts (testimony at R. 597-603).

[199] Mr. L. O. Kimberly, Jr., assistant to the manager of the traffic department representing the American Cotton Manufacturers' Association (testimony at R. 2064) and also the North Carolina, South Carolina, Georgia and Alabama Manufacturers' Associations.

[200] Mr. P. H. Johansen, textile freight rate expert representing the North Carolina Manufacturers' Association.

ping points throughout the country.[201] Other exhibits were offered for the purpose of weighting these freight rates in accordance with their importance to the industry and so estimating the average transportation cost advantages or disadvantages accruing to geographic classifications within the industry.[202] More than ten mill owners testified with respect to their own transportation cost problems. Also there was placed in evidence in this proceeding the opinions of the Interstate Commerce Commission dealing with rates on cotton factory products throughout the United States east of the Rocky Mountains.[203]

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201 Industry Committee No. 1 Exhibit No. 9 entitled "Competitive Conditions as Affected by Transportation Costs in the Cotton Textile Industry," 18 pages with 5 rate tables; The National Association of Cotton Manufacturers Exhibits number 24, a table showing freight rates on finished cotton piece goods from New England to 25 cities; number 25, a table showing rates on similar goods from 27 origin points in New England, Southeast and Southwest to 22 destinations; number 31, a table showing rates on unfinished cotton fabrics from manufacturing points in the South to finishing points in the South and East and on finished cotton fabrics from these finishing points to New York City; number 32, a table showing rates on finished cotton piece goods to western trunk line territory from North and South; number 33, a table showing rates on Similar goods to central territory; and the American Cotton Manufacturers' Association's Exhibits number 8, a table showing rates on finished cotton fabrics to New York City from the South and East; number 9, a table showing rates on similar goods from representative points of departure in South and East to the 25 largest cities in the United States; number 10, a table showing rates on similar goods from Atlanta and Boston to 283 cities east of the Mississippi River; number 12, a table showing rates on inbound compressed cotton and cotton piece goods from various places of origin to various places of manufacture and out to various markets; number 13, a table showing rates on unfinished cotton piece goods from southern and eastern points to southern and eastern finishing points and thence on finished goods to New York City; number 17, a table showing rates on finished cotton piece goods from representative northern and southern mill points to all cities of 100,000 population or greater in the United States.

202 See Industry Committee No. 1 Exhibit No. 9, The National Association of Cotton Manufacturers' Exhibits number 26 showing trade dominance of New York and Chicago, number 27 and 29 showing population of New England and Southern States, number 28, a table showing textile spindles in place in various sections of the country, and the American Cotton Manufacturers' Association's Exhibits Numbers 18-22 showing the average regional rate advantages based upon rates given in Exhibit 17. (See footnote 29 above.)

203 Industry Committee No. 1 Exhibits Nos. 8(a), (b) and (c).

2. *Transportation Costs on Raw Cotton and Mill Supplies.*

The cotton growing states are Virginia, Kentucky, Tennessee, North and South Carolina, Georgia, Alabama, Mississippi, Louisiana, Arkansas, Missouri, Oklahoma, Texas, and California.[204] During the year ending July 31, 1938, the Carolinas, Georgia and Alabama produced 4,066,406 bales of cotton while the Southwestern and Missisippi Valley states produced 12,809,304 bales.[205] Among these cotton growing states, the principal cotton manufacturing states are North and South Carolina (11,535,708),[206] Georgia (3,241,690), Alabama (1,823,046), Virginia (638,984) Tennessee (575,900), Texas (249,650).[207] According to a preliminary report of the U. S. Bureau of Census for June 20 1939, these cotton growing states accounted for 18,458,826 cotton spindles in place out of a total of 25,645,960 cotton spindles in the United States.[208] Other major cotton manufacturing states are Massachusetts (3,604,124), Rhode Island (972,728), Maine (689,300), Connecticut (516,576), New Hampshire (507,456) and New York (346,868).[209] These Northern States accounted for 6,637,052 cotton spindles.

Approximately two thirds of the cotton consumed by mills in cotton growing states is grown in neighboring counties or states.[210] Much of this raw cotton is transported less than 200 miles to the mill.[211] On the other hand, the New England mills must transport their raw cotton much greater distances. These greater distances are compensated for to some extent by the fact that most New

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204 Industry Committee No. 1 Exhibit No. 1, Page 9.
205 R. 2022.
206 Represents the number of spindles in place on May 31, 1939.
207 American Cotton Manufacturers Association's Exhibit No. 15; see also National Association of Cotton Manufacturer's Exhibit No. 28.
208 American Cotton Manufacturers Association's Exhibit No. 15.
209 Ibid.
210 Industry Committee No. 1 Exhibit No. 9, page 2; also see R. 2110.
211 Ibid. page 7.

England mills are located at or near the seaboard,[212] and consequently can take advantage of shipments over water routes at mile for mile low transportation costs, though at transportation costs higher than that paid by mills in cotton growing states for locally grown cotton. For instance the record shows that rail-water rates on Texas grown cotton to New Bedford approximate 58 cents per hundred pounds; on Oklahoma grown cotton via Houston 90 cents; on Arkansas grown cotton via New Orleans, 69 cents; and on Mississippi grown cotton via New Orleans, 58 cents.[213] The transportation costs involved in short hauls up to 200 miles in cotton growing states does not exceed 30 cents per hundred pounds.[214] But this advantage to the Southern and Southwestern mills does not exist in the event that these mills are required to purchase cotton from regions beyond their vicinity. For instance, rates offered in evidence by the American Cotton Manufacturers' Association indicate that mills located at Birmingham, Alabama; Macon and Atlanta, Georgia; Greenville, South Carolina; and Charlotte and Greensboro, North Carolina, must pay somewhat higher transportation costs on Texas cotton and somewhat lower costs on Oklahoma, Arkansas and Mississippi cotton, than the costs indicated above of shipping this cotton to New Bedford, Massachusetts.[215] Weighing together the disadvantage to some Southern mills in purchasing Texas cotton with compensating advantages to these mills in purchasing cotton from other regions, I find that as a whole transportation costs upon raw cotton run in favor of the mills located in cotton growing states.[216]

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212 Industry Committee No. 1 Exhibit No. 8(a), page 748.
213 American Cotton Manufacturers Association Exhibit No. 12.
214 Industry Committee No. 1, Exhibit No. 9, pp. 8-9.
215 American Cotton Manufacturers' Association's Exhibit No. 12.
216 No extensive contention was made that differences in transportation costs of mill supplies would affect appreciably production costs and competitive conditions. On certain supplies from the North, the southern mills pay higher freight charges. (R. 2088,

3. *Transportation Costs on Cotton Textile Products.*

Witnesses at the hearing conceded that freight rates from Northeastern mills to New York City and other Northeastern markets are lower than the rates from the Southern mills to these markets. One exhibit offered by the American Cotton Manufacturers' Association showed average freight rates on 100-pound shipments of finished cotton fabrics to New York City to be 34.2 cents from 50 representative Northeastern points and 85.2 cents from 50 representative Southern points.[217] Experts for the National Association of Cotton Manufacturers contended that the average difference between Northern and Southern shipments to New York City is less than these figures indicate. They pointed out that the Southern rates upon which this average is computed include the cost of delivery to the consignee while the Northern rates used in the same calculation for the most part do not include this cost.[218] Pick-up and delivery charges paid by Northern manufacturers on shipments to New York City may run as high as 15 cents per hundred pounds.[219] There still remains, however, a considerable freight rate advantage to the Northern mills in shipping goods to New York City. Chicago was shown to be the next largest consumer market and almost as important as New York.[220] Freight rates on shipments to Chicago from Northeastern and Southeastern mills are, according to practically all the testimony, on a parity, except that Northeastern mills may have a slightly lower rate for a short season of each year due to the availability of

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2146-2147). But other supplies are sold to northern and southern mills at standard prices or else are shipped f. o. b from northern and southern shipping points (American Cotton Manufacturers' Association's Exhibit No. 22). The record does not show that the slight disadvantage of southern mills in this respect erases their advantage with respect to raw cotton.

217 American Cotton Manufacturers' Exhibit No. 8.

218 R. 528-529,, 539-540, 543-544.

219 Ibid.

220 National Association of Cotton Manufacturers' Exhibit No. 26.

rail-water route through the Great Lakes.[221] Similarly points on the West Coast are reached by Southern and Northern mills at practically equal cost, though on this issue the record contains some conflict.[222] On shipments to most of the Middle West, South, and Southeast, the bulk of the evidence indicates that freight rates favor Southern and Southeastern mills.[223] An expert for the Northern group testified that among all states with a population of over 1,000,000 the Southern mills enjoy freight rate advantages on shipments into Texas, Missouri, North Carolina, Georgia, Alabama, Tennessee, Kentucky, Iowa, Virginia, Oklahoma, Louisiana, Mississippi, Kansas, Arkansas, South Carolina, Florida, Nebraska, Colorado, Illinois and West Virginia.[224] Markets in Illinois and West Virginia, however, may be reached by Northern mills at a rate no higher, and in some instances lower, than that paid by Southern manufacturers.[225] I conclude, therefore, that Illinois and West Virginia are more accurately listed as states which may be reached by Northern and Southern manufacturers at equal freight rates. This same approximate parity exists in Ohio, In-

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221 National Association of Cotton Manufacturers' Exhibit No. 25 and American Cotton Manufacturers Association's Exhibit No. 9.

222 National Association of Cotton Manufacturers' Exhibit No. 25 and American Cotton Manufacturers' Association Exhibit No. 17. The different conclusions dictated by these two exhibits relative to transportation costs to the west coast may be to some extent due to selection of different points of departure. However, it is noteworthy that the National Association's exhibit states that the lowest rate from Danville to Los Angeles, San Francisco and Seattle is $1.35 per hundred pounds; while the American Association's exhibit quotes a rate of $1.60 from Danville to Los Angeles, $1.40 to San Francisco, and $1.41 to Seattle.

223 National Association of Cotton Manufacturers' Exhibits No. 25 and 33; American Cotton Manufacturers' Exhibits No. 10 and 17. Much testimony was offered to show that transportation costs might be lower than those cited in these rate schedules either by truck, by water or by virtue of special commodity rates. I find, however, that these advantages are not peculiar to any particular region and hence that the rates cited serve as a reasonably accurate statement of relative costs between different points of destination and origin.

224 R. 576-577. See also National Association of Cotton Manufacturers' Exhibit No. 29.

225 See footnote No. 223 above.

diana, Wisconsin and Minnesota. Thus, a line of neutral territory runs from Virginia through West Virginia, Ohio, Indiana, Illinois, Wisconsin to Minnesota.[226] Northern mills have a freight rate advantage in shipping to markets north and east of this neutral territory, the Southern mills have an advantage shipping to points south and west, except that the West Coast is again neutral territory.

Experts representing the Southern mills testified that, taking as points of destination the larger cities throughout the entire country, the average transportation cost from Southern mills to these points is 13 percent higher than the cost from Northern mills. This conclusion is based upon a tabulation of textile freight rates via lowest rated routes from six Southern textile centers and six Northern textile centers to all cities (totaling 93) in the United States with a population of 100,000 or greater.[227] Another study shows that the transportation cost via all rail routes from Atlanta and from Boston to 283 principal cities east of the Mississippi is on an average 23.6 cents less per hundred pounds from Boston than from Atlanta.[228] These estimates were offered to show that the Southern mills suffer an average transportation cost disadvantage on a nation-wide basis. Without determining the accuracy of the estimates, which was disputed, the resulting average nation-wide transportation cost from Northern and Southern shipping points is not in itself evidence that the Southern mills suffer a nation-wide competitive disadvantage in the industry as a result of transportation cost. These average cost figures are not inconsistent with our earlier findings regarding those territories into which the Southern and Northern mills are able to ship advantageously or upon an approximately equal basis. Instead, the rates cited in these studies

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[226] See footnote No. 223 above. Also for illustration see the map Exhibit No. 30 of the National Association of Cotton Manufacturers.
[227] American Cotton Manufacturers Association's Exhibit No. 17.
[228] American Cotton Manufacturers Association's Exhibit No. 10.

themselves support our earlier conclusion that there are areas into which Southern mills can ship advantageously and areas into which Northern mills can ship advantageously. It remains to determine whether or not and to what extent these transportation cost advantages affect competitive relations between Northern and Southern mills.

These studies show that a larger number of big cities are located in territories in which Northern mills have a transportation cost advantage than in the territories in which Southern mills have the advantage. The first of these studies shows 37 cities with a population of over 100,000 located in Northern territory, 28 in Southern, and the remaining 28 in neutral territory.[229] With regard to the so-called "principal cities" east of the Mississippi, the other study locates 150 in Northern territory, 52 in Southern territory, and 81 in neutral territory.[230] On the other hand, the record shows that total population is somewhat greater in the territory favoring Southern mills than in Northern territory.[231] Concentration of large cities in Northern territory is not an accurate measure of a Northern competitive advantage in transportation costs because only in so far as these points are the principal markets and the Northern and Southern mills are actually competing for these markets are competitive conditions among those mills affected by transportation costs to these points.

In addition, the high transportation costs borne by Southern mills shipping to Northern markets does not always place the Southern shipper at a competitive disadvantage. For instance, Northern finishing plants rely in very large measure upon Southern mills for their grey goods.[232] The

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229 See footnote No. 58 above
230 See footnote No. 228.
231 National Association of Cotton Manufacturers' Exhibit No. 29.
232 Industry Committee No. 1 Exhibit 8(a), pp. 754-757.

high transportation cost involved in shipping grey goods from Southern manufacturers to Northern finishers has caused complaints by the Northerners.[233] Northern finishing plants, relying of necessity upon Southern grey goods, have claimed that they are placed at a competitive disadvantage because Southern finishing plants secure their grey goods more cheaply from nearby Southern mills. Apparently in this instance the high South to North rates work to the disadvantage of the Northern mills.

This competitive situation between these finishing plants was made the subject of rate studies by representatives of both the Northern and Southern groups.[234] These studies illustrate vividly the error of contrasting transportation costs without careful regard for actual competitive relationships in the industry. One study establishes a transportation cost advantage of 46 percent favoring the Northern finishing plant. The other establishes a slight Southern advantage. The sharp contrast between those two conclusions results because the first includes among its points of origin for grey goods five mill towns in Northern territory and one in neutral territory. The second limits its points of origin to Southern states. Thus, the first assumes that the Northern finishing plant has available grey goods manufactured in Northern territory. But if such grey goods were available, Northern finishing plants would not be contending that they were prejudiced by higher inter-territorial rates on Southern grey goods. In fact, it is abundantly clear from the record that Northern manufacturers of grey goods are by no means able to supply the needs of Northern finishing plants.[235] The second study, therefore, represents more accurately the dominant competitive situation—namely, a condition in

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[233] Ibid.

[234] National Association of Cotton Manufacturers' Exhibit No. 31 and American Cotton Manufacturers Association's Exhibit No. 13; R. 2085.

[235] See footnote No. 232.

which Northern finishing plants are competing with Southern finishing plants for Southern grey goods and in which a slight competitive disadvantage may fall upon the Northern finishing plant because of the high cost of transportation into the Northern territory.

There is plentiful evidence that a very substantial portion of the shipments of Southern textiles into Northern territory are destined for use in Northern textile mills.[236] In 1934 Southern mills produced approximately 90 percent of the total yardage of grey print cloth in the United States and in 1937 produced 75 percent of the total value of cotton yarns in the United States.[237] With respect to that portion of Southern yarn and grey goods shipped into Northern territory, high transportation costs often affect adversely the competitive position in the industry of the Northern weaving and finishing mills and not of the Southern yarn and grey goods mills.

There is also evidence that Southern textile mills produce certain textile products, particularly coarser goods, not manufactured by Northern mills. High transportation costs in shipping these goods to Northern markets will not benefit Northern mills and will not affect competitive relations in the industry. In fact, J. E. Serrine, who appeared in opposition to the recommendation, stated that the minimum did not create a North-South problem because the manufacturers do not compete in the same lines of goods.[238]

Furthermore, Southern mills have transportation cost advantages over Northern mills with respect to those portions of their product competing with the prod-

[236] Committee's Exhibit 8(a), pp. 700 and 754.
[237] Industry Committee No. 1 Exhibit No. 9, p. 11, and Committee Group of Small Textile Mills Exhibit No. 29.
[238] R. 2169-2170.

uct of Northern mills in territory outside of the Northern territory. Without considering the transportation cost advantages found on inbound raw cotton, Southern mills have a transportation cost advantage shipping to Southern states and, according to one estimate, distribute 20 percent of their production in these states.[239] Southern mills also have a similar transportation cost advantage in shipping to many of the large industrial centers of the Middle West.[240] Then, in addition if there is included the transportation cost advantage to Southern mills on raw cotton, Southern mills have also a transportation cost advantage in shipping to territory which was found to be neutral from the point of view of outbound shipments alone. These neutral states contain large retail as well as industrial areas. Taking these advantages together, I conclude that the Southern mills have transportation cost advantages which approximately balance the disadvantage such mills suffer in the Northern territory.

Furthermore, assuming that some transportation cost disadvantages do accrue to Southern mills, these cost disadvantages will, at the outside, amount to only a small percentage of the value of the product. The record contains several estimates of the ratio which the value of the product bears both to total transportation costs and to differences in transportation costs of Northern and Southern mills.[241] In view of these estimates, I conclude that such differences in transportation costs as may exist, cannot appreciably affect competitive conditions between definable geographic regions.

4. *Transportation Costs of Southwestern Mills.*

Representatives of mills located in the Southwest urged that transportation costs are a factor which make a classification in their favor necessary.[242] This contention is

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239 R. 575.
240 See footnote No. 226.
241 Industry Committee's Exhibit No. 9, at p. 5 ff and R. 2115 ff.
242 R. 1621, 2729-2731.

answered by rate schedules offered by both Southern and Northern representatives.[243] These schedules show that the Southwest is on a transportation cost parity with both Southern and Northern mills for such important markets as Chicago and the industrial areas of Ohio and Indiana. For instance, these Southwestern mills have lower freight rates in shipping to the Midwestern and South Central area as well as lower rates in securing raw cotton. Southwestern cotton mills employ approximately 4700 employees and account for only 1¼ percent of the value of the total cotton textile production in the United States.[244] The market available to these mills at either a transportation cost advantage or parity consumes a far larger portion of the country's textile products. I find, therefore, that the transportation costs which must be undertaken by these Southwestern mills do not affect competitive conditions within this Southwest region so as to require a minimum wage classification.

I find that any advantages which the North may have with respect to the cost of transporting textile products is balanced by advantages to Southern mills on inbound cotton. I conclude, therefore, that transportation costs are not a factor which will affect competitive conditions between any definable groups or regions in the textile industry to such an extent as to afford a basis for a classification in accordance with provisions of Section 8 (c).

C. *Production Costs.*

Charles A. Cannon stated that he thought there was a much larger percentage of obsolescent machinery in the East than in the South since the industry is newer in the South.[245] Studies made by the Textile Workers

[243] See footnote No. 29.
[244] R. 33.
[245] R. 1579.

Union of America confirm this view. Their general conclusion was that textile mills in the South are of more recent construction and contain more modern machinery than mills in the North. Loom manufacturers reported that 25.32 percent of the looms in the South were less than 10 years old while the North had only 15.9 percent of looms in this age category.[246]

There also was general agreement that Southern workers are as efficient as workers in the North.[247]

Furthermore, the tax burden appears to be greater in the North than in the South. Census figures show the following per-capita tax rates for selected Southern and Northern States:[248]

State	Per Capita Tax Rate
Alabama	$17.50
North Carolina	26.90
Mississippi	20.16
Massachusetts	31.59
Maine	34.52
Rhode Island	32.24

Although these differences can be explained, as suggested, by differences in per capita wealth the fact remains that the Northern mill will be subjected to a greater dollar cost on the average for taxes. The per capita tax in Birmingham, Alabama, a city of 257,000 population is $22.76 in contrast to the per capita tax rate of $53.03 in New Bedford, Massachusetts, a city of 112,000.[249]

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[246] R. 1200.

[247] R. 176, 327, 444, 503, 1807, 2190-1. Professor Gus W. Dyer, Professor of Economics at Vanderbilt University and a witness for the American Association of Cotton Manufacturers states, however, that there is a difference between the skilled labor of New England and the untrained country town worker of the South, R. 1972.

[248] R. 1814.

[249] R. 1815 American Association of Cotton Manufacturers, Exhibit No. 10.

It would also appear that power costs and construction costs are less in the South than in the North.[250]

Paul E. Crocker, Vice President and Controller of the Pepperell Manufacturing Company, who appeared pursuant to subpoena, testified that a cost analysis showed that the Southern mills owned by this company would retain their cost advantage over the Northern mills after the adoption of the minimum wage rate.[251] Similar testimony with respect to the Southern and Northern branches of the Pacific mills was given by Dwight B. Billings, the Comptroller of the Company.[252]

The comparative table of profits and losses for the Southern and Northern branches of the cotton textile industry set out above shows that the South is not at a competitive disadvantage with the North. It may also be noted that this relationship persisted during the period of minimum wage regulation inaugurated by the NRA. In view of these facts, therefore, it appears that the South has production cost advantages in some respects and is in at least a position of equality.

In the consideration of production costs as a basis for classification it would appear that a higher average wage rate structure in an area is not a justification for a lower-wage differential in favor of that area. The Act does not contemplate that the Administrator shall use his power to issue minimum wage orders for the purpose of depressing wage rates in order to equalize competitive conditions.

However, where a claim is made that a minimum wage recommendation will place an area at a competitive dis-

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250 R. 328 and see R. 1816. National Association of Cotton Manufacturers Exhibit No. 6, R. 2799.
251 R. 476.
252 R. 507.

advantage it is permissible to give complete consideration to competitive relationships including comparative labor costs.

In this proceeding it has been shown that the average wage rate in the North will be 6.4 cents higher than the South even if the 32½-cent minimum wage recommendation is adopted. The South will therefore have an average labor cost advantage over the North of 16.7 percent. It has also been shown that the Northern section of the cotton textile industry is well unionized and that the prevailing minima established in agreements between the unions and the employers is 34.4 cents.[253] The South will, therefore, have a differential in minimum wages of 1.9 cents.

I conclude, therefore, that the South is at least in a position of equality with the North as far as production costs are concerned and that with respect to production, transportation and living costs considered together there is also substantial equality between the regions. I find, too, that competitive conditions as affected by transportation, living and production costs do not justify a differential in minimum wage rates.

D. *Collective Labor Agreements and Voluntary Wage Standards.*

Representatives of the United Textile Workers of America testified that the collective labor agreements concluded by their Union in the South do not specify minima lower than 32½ cents an hour.[254] The total number of collective labor agreements in the Southern branch of the industry is small. Although there was no evidence on prevailing minima or average rates in all Southern collective

[253] R. 677.
[254] R. 1144, 1128.

labor agreements, it would seem clear that the existence of lower rates would not require the establishment of a lower classification since, as has been stated in Congressional debates, the Act is intended to operate in fields where collective bargaining is not effective. I conclude, therefore, that collective labor agreement wage rates do not require the establishment of a classification for the South below the minimum wage recommendation of Industry Committee No. 1 under the terms of Section 8 (c).

I also find that the evidence on wages paid by employers maintaining voluntary minimum wage standards in the industry does not require a classification for the Southern division of the cotton textile industry.

E. *The Southwestern Freight Area.*

It has been shown previously that transportation costs do not affect competitive conditions in the Southwestern area so as to require a classification under Section 8 (c) of the Act. I also find that the evidence on other factors bearing on whether a classification should be made for the South is applicable to the Southwestern area and that no classification for this area is required under Section 8 (c) of the Act.

Furthermore, the manufacturers in this area employ only 1.23 percent of the wage earners in the cotton textile industry and account for 1.16 percent of the value of the product. The small proportion of the industry represented by this area when considered together with the evidence in the record on the relationship of this area to the South as a whole leads me to conclude that there is no basis upon which a reasonably definable classification could be made for the cotton textile manufacturers of the Southwest under the terms of 8 (c) of the Act.

F. *Conclusions as to Cotton Textiles.*

Considering transportation, living and production costs together with the evidence on collective labor agreements and voluntary wage standards, I find that these costs do not differ between any reasonably definable groups or regions within the cotton textile industry so as to affect competitive conditions within the industry or make necessary a classification within the meaning of Section 8 (c) of the Act.[255]

Furthermore, in view of the weight of the evidence against the necessity for classification on the basis of factors expressly recited in the Act, it appears that other factors which may have a possible relationship to the determination of the question would not require a materially different conclusion and that Section 8 (c) of the Act does not require either the Committee or the Administrator to examine such factors minutely. In addition, therefore, I conclude that the record developed at the hearing before me has conclusively established that all the provisions of Section 8(c) which relate to necessity for a classification have been satisfied by the Committee's recommendation of a uniform minimum wage rate.

G. *Classification in Divisions of Textile Industry Other Than Cotton.*

As has been demonstrated earlier, the divisions of the textile industry other than cotton have for the most part

[255] Cotton Waste Processing. The evidence on the scope of the definition demonstrates that the processing of cotton textile waste is a part of the cotton textile industry. It also appears that any unemployment which may occur in this business will not cause substantial dislocation of employment in the cotton textile industry (R. 2528) and that taking account of the production of purchased cotton waste in the north (R. 2538, 2540) and processing operations conducted in integrated mills (R. 2538, 2539) there will be no substantial curtailment of employment in the cotton waste processing business.

I find, too, that there is no basis upon which a reasonably definable classification can be made under Section 8(c) of the Act for processors of purchased cotton waste.

a higher wage structure than cotton and will be subject to a much lesser degree of adjustment from the minimum wage recommendation. The evidence which has just been reviewed on the question of regional competitive conditions in the cotton division of the industry is for the most part relevant to the question of competitive conditions in the other branches of the textile industry. On the basis of this evidence and of the evidence set forth to show that there will be no substantial curtailment of employment in these branches, I find that no classifications within these branches are required or justified under the Act.

VIII. *Requirement That Notice of the Wage Order Be Posted in Textile Mills.*

Section 8 (f) of the Act provides that wage orders issued under Section 8 "shall define the industries and classifications therein to which they are to apply, and shall contain such terms and conditions as the Administrator finds necessary to carry out the purposes of such orders, to prevent the circumvention and evasion thereof, and to safeguard the minimum wage rates established therein."

To assure immediate and complete enforcement of the wage order issued in this proceeding, I find it necessary that a notice of the order in a form supplied by the Wage and Hour Division be posted and kept posted in a conspicuous place in every mill employing any employees who are subject to the provisions of the wage order.

IX. *Conclusion.*

Upon reviewing all the evidence adduced in this proceeding and giving consideration to the provisions of the Act, with special reference to Sections 5 and 8, I conclude

that the Industry Committee's recommendations for the textile industry, as defined in Administrative Order No. 25 are made in accordance with law, are supported by the evidence adduced at the hearing and, taking into consideration the same factors as are required to be considered by the Industry Committee, will carry out the purposes of Section 8 of the Act.

The wage order issued pursuant to this opinion shall become effective on October 24, 1939.

Signed at Washington, D. C., this 29th day of September, 1939.

ELMER F. ANDREWS,
(Elmer F. Andrews)
Administrator, Wage and Hour Division, United States Department of Labor.

For Immediate Release R-422
Friday, September 29, 1939.

WAGE ORDER.

September 29, 1939.

Wage and Hour Division,
United States Department of Labor,
Washington, D. C.

In the Matter of the Recommendation of Industry Committee No. 1 for Minimum Wage Rates in the Textile Industry.

Whereas, on September 13, 1938, pursuant to Section 5 of the Fair Labor Standards Act of 1938 (hereinafter called

the Act), the Administrator of the Wage and Hour Division of the United States Department of Labor by Administrative Order No. 1 appointed Industry Committee No. 1 for the textile industry and directed the Committee to recommend minimum wage rates for the textile industry in accordance with the provisions of Section 8 of the Act; and

Whereas, the Committee included seven disinterested persons representing the public and a like number of persons representing employees in the textile industry and a like number representing employers in the textile industry, and each group was appointed with due regard to the geographical regions in which the textile industry is carried on; and

Whereas, on May 23, 1939, the Committee filed with the Administrator a report containing its recommendation for a 32½ cents an hour minimum wage rate in the textile industry; and

Whereas, after notice published in the Federal Register on May 27, 1939, the Administrator held a public hearing upon the Committee's recommendation at Washington, D. C., and Atlanta, Georgia, which commenced on June 19, 1939, and at which all interested persons were given an opportunity to be heard; and

Whereas, the Administrator upon consideration of the evidence taken at such hearing has found that the Committee's recommendations are made in accordance with law, are supported by the evidence adduced at the hearing, and, taking into consideration the same factors as are required to be considered by the Industry Committee, will carry out the purposes of Section 8 of the Act; and

Whereas, the Administrator has set forth his decision in an opinion, entitled "Administrator's Findings and Opinion in the Matter of the Recommendation of Industry Committee No. 1 for Minimum Wage Rates in the Textile Industry", dated this day, a copy of which may be had upon request addressed to the Wage and Hour Division, Washington, D. C.;

Now, Therefore, It Is Ordered That

(1) The Committee's recommendation is hereby approved and, in accordance with such recommendation,

(a) Wages at a rate not less than 32½ cents an hour shall be paid under Section 6 of the Act by every employer to each of his employees in the textile industry who is engaged in commerce or in the production of goods for commerce; and

(b) Every employer employing any employees engaged in commerce or in the production of goods for commerce in the textile industry shall post and keep posted in a conspicuous place in every department of his establishment where such employees are working such notices of this Order as shall be prescribed from time to time by the Wage and Hour Division of the United States Department of Labor; and

(c) The textile industry to which this order shall apply is hereby defined as follows:

(1) The manufacturing or processing of yarn or thread and all processes preparatory thereto, and the manufacturing, bleaching, dyeing, printing and other finishing of woven fabrics (other than carpets and rugs) from cotton, silk, flax, jute or any synthetic fiber, or from mixtures of these fibers; or from such mixtures of these fibers with

wool or animal fiber (other than silk) as are specified in clauses (7) and (8); except the chemical manufacturing of synthetic fiber and such related processing of yarn as is conducted in the establishments manufacturing synthetic fiber;

(2) The manufacturing of batting, wadding or filling and the processing of waste from the fibers enumerated in clause (1);

(3) The manufacturing, bleaching, dyeing, or other finishing of pile fabrics (except carpets and rugs) from any fiber or yarn;

(4) The processing of any textile fabric, included in this definition of this industry, into any of the following products: bags; bandages and surgical gauze; bath mats and related articles; bedspreads; blankets; diapers; dish-cloths, scrubbing cloths and wash-cloths; sheets and pillow cases; table-cloths, lunch-cloths and napkins; towels; and window-curtains;

(5) The manufacturing or finishing of braid, net or lace from any fiber or yarn;

(6) The manufacturing of cordage, rope or twine from any fiber or yarn;

(7) The manufacturing or processing of yarn or thread by systems other than the woolen system from mixtures of wool or animal fiber (other than silk) with any of the fibers designated in clause (1), containing not more than 45 percent by weight of wool or animal fiber (other than silk);

(8) The manufacturing, bleaching, dyeing, printing or other finishing of woven fabrics (other than carpets and

rugs) from mixtures of wool or animal fiber (other than silk) containing not more than 25 percent by weight of wool or animal fiber (other than silk), with any of the fibers designated in clause (1), with a margin of tolerance of 2 percent to meet the exigencies of manufacture."

(d) This wage order shall become effective on October 24, 1939.

Signed at Washington, D. C., this 29th day of September, 1939.

ELMER F. ANDREWS,
(Elmer F. Andrews)
Administrator, Wage and Hour Division, U. S. Department of Labor.

I certify this to be a true copy of the original as signed by Elmer F. Andrews, Administrator.

HELEN G. PATTON,
Office of the Acting Administrator.

CERTIFICATION.

United States Department of Labor,
Wage and Hour Division,
Washington, D. C.

I, HAROLD D. JACOBS, Acting Administrator of the Wage and Hour Division, United States Department of Labor, do hereby certify that the attached documents which are described as follows are a true and accurate copy of the record of the public hearing on the minimum wage recommendation of Industry Committee No. 1 for

the textile industry which is in the files of the Administrator of the Wage and Hour Division:

Transcript of the testimony in the matter of public hearing on the recommendations of Industry Committee No. 1 concerning minimum wage rates for the textile industry numbered from page 1 to page 3412.

Administrator's Exhibits 1-5, 7, 8.

Textile Committee Hearing before Subcommittee "D" held in Washington, March 1 and 2, 1939—Administrator's Exhibit No. 6.

Textile Committee Hearing held in Washington, D. C., December 14, 15, 16, 17, 1938—Volume 1—December 14, 1938—Administrator's Exhibit #6.

Textile Committee Hearing held in Washington, D. C., December 14, 15, 16, 17, 1938—Volume 2—December 15, 1938—Administrator's Exhibit #6.

Textile Committee Hearing held in Washington, D. C., December 14, 15, 16, 17, 1938—Volume 3—December 16, 1938—Administrator's Exhibit #6.

Textile Committee Hearing before Subcommittee "B" November 1, 2, and 3, 1938—Exhibits and Supplemental Briefs—Administrator's Exhibit #6.

Textile Committee Hearing held in Washington, D. C., December 14, 15, 16, 17, 1938—Volume 4—December 17, 1938—Administrator's Exhibit #6.

Textile Committee Conference held in Washington, D. C., October 11 and 12, 1938—Administrator's Exhibit #6.

Reports and Data Submitted to the Textile Committee by B. L. S. and Economic Section—Administrator's Exhibit #6.

Joint Meeting of Industry Committee No. 1 and No. 1A, May 22, 1939—Volumes I and II—Administrator's Exhibit #6.

Textile Committee Hearing before Subcommittee "B" November 1, 2 and 3, 1938—Administrator's Exhibit #6.

Textile Journal—Administrator's Exhibit #6.

I—Exhibits of Industry Committee No. 1—Book 1.

II—Exhibits of Industry Committee No. 1—Book 2.

III—Exhibits of National Association of Cotton Manufacturers—Book 1.

IV—Exhibits of National Association of Cotton Manufacturers—Book 2.

V—Exhibits of National Association of Cotton Manufacturers—Book 3.

VI—Exhibits of United Textile Workers of America and Textile Workers Union of America.

VII—Exhibits of American Cotton Manufacturers Association and Southern States Industrial Council.

VIII—Exhibits of Committee of Small Southern Textile Mills.

IX—Exhibits of (1) Edith Nourse Rogers.

(2) U. S. Automobile Workers C.I.O.

(3) Lewis T. Barringer.

with the exception of the following items which are in the files of the Administrator of the Wage and Hour Division and will be provided to the Court upon request:

1. Industry Committee's Exhibit No. 16—a red dress with 8" zipper.

2. Industry Committee's Exhibit No. 17—a red dress with 6" zipper.

3. Industry Committee's Exhibit No. 18—A blue dress.

4. Industry Committee's Exhibit No. 19—a white medallion.

5. Industry Committee's Exhibit No. 20—a black and white medallion.

6. Institute of Manufacturers of Bagging for Covering Raw Cotton Exhibit No. 1—a piece of jute bagging.

7. Institute of Manufacturers of Bagging for Covering Raw Cotton, Exhibit No. 2—a piece of sugar bag cloth.

and with the exception of the following item which will be filed subsequently with the Court:

Industry Committee's Exhibit No. 24—a letter of the Paterson Chamber of Commerce in support of the textile minimum wage recommendation.

HAROLD D. JACOBS,
(Harold D. Jacobs)
Acting Administrator, Wage and Hour Division, U. S. Department of Labor,
Washington, D. C.

November 8, 1939.

Copy.

COM. EX. 24.

Chamber of Commerce of Paterson, New Jersey.
Office of the Secretary.

June 17, 1939.

Administrator,
Wages and Hours Division,
Washington, D. C.

Dear Sir:

The Paterson Chamber of Commerce respectfully begs leave to record itself in favor of the 32½¢ minimum wage in the textile industry, irrespective of fiber used or the location of the mill.

Paterson manufacturers took pride in cooperating with the humane laws placed on New Jersey statute books regarding the lowering of hours of labor.

From the time New Jersey placed upon its statute books its then famous 55-hour law (half-day Saturday) and with which the law the better manufacturers in this area made efforts to make effective, we have felt here the continued pressure of out-of-State competitive sections.

The same pressure continued as hours in this State were gradually reduced to 48 per week, then 44, and now 40.

Always there was the contention, by the most efficient manufacturers, large and small, that outside areas continually forced acute competition by taking advantage of four or more hours per week, over Paterson, and too, a lower wage scale.

Today, Paterson might well ask what particular benefit has accrued to it, economically, to have put into effect these lower hours of labor, make effective as possible child labor laws, and the like?

Despite cooperative efforts on the part of labor and manufacturers, the creation of conciliation committees or boards, the continual efforts of labor and manufacturers here to bring about hours of labor and wages understanding with other sections, the fact remains that these efforts to cooperate, the pressure of outside unfair competition has made the textile industry one of continual bickering and troubles.

We believe the adoption of the 32½¢ minimum wages per hour will solidify the textile industry, which is, of course, competitive in the interstate commerce field.

We hope you will favor the minimum.

CHAMBER OF COMMERCE of
PATERSON, N. J.
(Signed) JOHN J. FITZGERALD,
Secretary.

CERTIFICATION.

United States Department of Labor,
Wage and Hour Division,
Washington, D. C.

I, HAROLD D. JACOBS, Acting Administrator, Wage and Hour Division, United States Department of Labor, do hereby certify that the foregoing page is a true and accurate copy of the letter from the Chamber of Commerce of Paterson, New Jersey, to the Administrator of the Wage and Hour Division, dated June 17, 1939, which was introduced as a part of Exhibit 24 of Industry Committee No. 1 in the record of the public hearing on the minimum wage recommendation of Industry Committee No. 1 for the Textile Industry which is in the files of the Administrator of the Wage and Hour Division.

HAROLD D. JACOBS,
(Harold D. Jacobs)
Acting Administrator, Wage and Hour Division, United States Department of Labor, Washington, D. C.

November 16, 1939.

That thereafter, the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:—

ARGUMENT AND SUBMISSION.

Extract from the Minutes of February 28th, 1940.

No. 9313

OPP COTTON MILLS, INC.,

versus

ADMINISTRATOR OF THE WAGE AND HOUR DIVISION OF THE DEPARTMENT OF LABOR.

On this day this cause was called, and, after argument by Ben F. Cameron, Esq., and Gessner T. McCorvey, Esq., for petitioner and Intervenors, and George A. McNulty, Esq., General Counsel, Department of Labor, for respondent, was submitted to the Court.

OPINION OF THE COURT—FILED APRIL 2nd, 1940

IN THE

UNITED STATES
CIRCUIT COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 9313

OPP COTTON MILLS, INC.,
Petitioner,

versus

ADMINISTRATOR OF THE WAGE AND HOUR DIVISION OF THE DEPARTMENT OF LABOR,
Respondent.

On petition to review a wage order of the Administrator of the Wage and Hour Division, United States Department of Labor.

April 2, 1940

Before HOLMES and McCORD, Circuit Judges, and MIZE, District Judge.

McCORD, Circuit Judge.

The Administrator of the wage and Hour Division of the Department of Labor issued a wage order on September 29, 1939, providing that effective October 24, 1939, wages at

a rate of not less than 32½ cents an hour be paid to all employees in the textile industry. The wage order was issued pursuant to the provisions of the Fair Labor Standards Act of 1938, 52 Stats. p. 1060, 29 U.S.C.A. § 201 et seq.

Opp Cotton Mills, Inc., operator of a small cotton mill at Opp, Alabama, petitioned this court to review and set aside the uniform minimum wage order. Southern Cotton Manufacturers Association, an unincorporated group representing small cotton mills in Texas and other Southern states, and fifteen concerns operating cotton mills in Georgia, Alabama, Mississippi, and Louisiana filed intervention petitions. This proceeding is before us under the provisions of Section 10(a) of the Act.

The petitioners contend that the Act is unconstitutional; that the Administrator did not give consideration to the factors required by the statute; and that his order fixing a uniform minimum wage of 32½ cents an hour for the textile industry is illegal and void.

It is provided by Section 6 of the Act that every employer engaged in interstate commerce or in the production of goods for interstate commerce shall pay wages of (1) not less than 25 cents an hour during the first year after the effective date of the section; (2) not less than 30 cents an hour during the next six years; and (3) after seven years "not less than 40 cents an hour, or the rate (not less than 30 cents an hour) prescribed in the applicable order of the Administrator." Sections 5 and 8 provide administrative machinery for establishing hourly wage rates in excess of the statutory minimum of 30 cents, but not in excess of 40 cents an hour. The 25 cent minimum hourly wage provided for by Section 6(a)(1) was in effect for one year, and on the day the 30 cents hourly minimum provided for by Sec-

tion 6(a)(2) was to take effect the wage order here attacked raised the minimum to 32½ cents.

[1, 2] A further provision made it the duty of the Administrator to appoint industry committees, and on September 13, 1938, acting pursuant to Section 5, the Administrator appointed Industry Committee No. 1 for the textile industry. This committee consisted of 21 members, seven representing the public, seven representing employers, and seven representing employees. Section 5(b) provides that those representing each group of the industry committees be appointed with "due regard to the geographical regions in which the industry is carried on." The Administrator appointed three members of the public group, four members of the employers group, and two members of the employees group from Southern states, but the petitioners contend that the South was not given full and proper representation. The provisions of the Act requiring the Administrator to give "due regard" to geographical regions in the appointment of committee members did not require him to apportion membership on the committee with mathematical precision. It was the duty of the Administrator to exercise sound discretion in this regard and we do not find that he abused that discretion. Cf. Ralston Steel Car Co. v. Commissioner, 6 Cir., 53 F.2d 948, 950; United States v. Interstate Commerce Commission, 66 App. D.C. 398, 88 F.2d 780, 783.

[3] The duty of Industry Committee No. 1 was to investigate conditions in the textile industry and "recommend to the Administrator the highest minimum wage rates * * * which it determines, having due regard to economic and competitive conditions, will not substantially curtail employment in the industry." Section 8(c) further provides that the industry committee recommend such rea-

sonable classifications within an industry as it determines to be necessary, and that in determining such classifications "the industry committee and the Administrator shall consider among other relevant factors the following: (1) competitive conditions as affected by transportation, living and production costs; (2) the wages established * * * by collective labor agreements * * *; and (3) the wages paid for work of like or comparable character by employers who voluntarily maintain minimum-wage standards in the industry." The committee functions in an investigatory and advisory capacity and the Act makes no provision for a court review of the proceedings before it. The record shows, however, that for several months Industry Committee No. 1 made a detailed and exhaustive study of the problems confronting the textile industry, and heard many witnesses, and considered many briefs, exhibits, letters, and statistical and economic studies. Petitioners' complaint that the committee did not proceed in accordance with the provisions of the Act is not well founded. Cf. United States v. Los Angeles & S. L. R. R., 273 U.S. 299, 310, 47 S.Ct. 413, 71 L.Ed. 651; United States v. Atlanta, B. & C. R. Co., 282 U.S. 522, 527, 528, 51 S.Ct. 237, 75 L.Ed. 513.

On May 22, 1939, Industry Committee No. 1, by a vote of 13 to 6, adopted a resolution recommending a uniform minimum wage of 32½ cents an hour for the textile industry. On the coming in of the committee's report and recommendations the Administrator published notice of a public hearing in the Federal Register, trade journals, and newspapers, as provided by the Act. The notice advised that any interested person might appear at the hearing to offer evidence "either on his own behalf, or on behalf of any other person * * *." The Administrator's hearing was opened in Washington on June 19, 1939, adjourned to Atlanta on

June 26th, reconvened in Washington on July 10th and on July 11th the hearing was concluded. At the hearing the Administrator heard over 100 witnesses, including employers, employer representatives, labor representatives, freight experts, government economists, and economic experts. The testimony taken at the hearing measured to more than 3,000 pages, and many volumes of exhibits were received and made a part of the record. Thereafter the Administrator prepared extensive findings based upon the evidence taken at the hearing. After reviewing all the evidence he found that the recommendations of Industry Committee No. 1 were made in accordance with law and supported by the evidence. On the basis of these findings he issued the order fixing a uniform minimum wage for the industry.

The record before us consists of more than ten thousand pages of testimony and exhibits. Much acrimony and bitterness is exhibited in the testimony of several of the witnesses. No good purpose could be served by setting out the evidence at length, and we only attempt to point out the trend and weight of the evidence as reflected by a careful reading of the voluminous record. From the testimony of the long line of witnesses favorable to petitioners we quote only a few excerpts:

Clarence Miller of Dallas, Texas, connected with several cotton mills testified, "If the Fair Labor Standards Act is enforced according to the recommendations of the majority of the committee, without a differential, and the freight discriminations are not removed, there will not be a cotton mill operating in Texas at the end of five years." M. M. Bryan, president and General Manager of the Jefferson, Georgia Mills testified, "Regardless of what effect the increase in minimum wages may have upon the company I represent, I believe any mimimum wage law will ultimately prove to

be unwise and a serious detriment to the industrial progress of our country." J. F. Ames, Selma, Alabama, with over fifty years' experience in the cotton mill manufacturing business, testified, "Great disaster will overtake the small mills in the event the proposed rate of 32½ cents an hour goes through." Governor Hugh White of Mississippi and Governor Frank Dixon of Alabama offered strong evidence favorable to petitioners. Dr. Gus W. Dyer of Vanderbilt University testified, "Now, if you believe in this principle of making the strong stronger and the weak weaker, and that the function of the government is to look after the strong and let the weak go to hell, then I can see some reason for it, but otherwise, I can't." Donald Comer of Birmingham, Alabama, connected with Avondale Cotton Mills, with clarity and without prejudice, offered quite the strongest evidence for the petitioners that is to be found in the record. On the question of transportation and freight rates L. O. Kimberly, Jr., of Atlanta, who had eighteen years experience in freight traffic work and who had spent much time studying textile freight rates, testified that he had made "a study of the rate levels in the North and in the South and between the territories * * *. I believe I am fairly well familiar with the rate structure of these products. * * * The combination of these inbound rates on cotton and the outbound rates on manufactured cotton products gives the Eastern mills a substanial advanage." Using Boston and Atlanta as focal points from which to base his estimate, he placed the Southern Base Group mill points as having a rate disadvantage of 17.5 per cent. P. H. Johansen, Washington, D. C., who had thirteen years' experience in freight rates, six years of which were with textile rates, testified, "The average rate from New England to all points, however, is 100.90 cents, and the average rate from the South is 114.06; or an average of 13.04 per cent against the South-

ern mills * * * I would like to remark here that is a simple mathematical average. Later I believe I can show the disadvantage is much greater than that. * * *."

In opposition to the testimony of the witnesses favorable to petitioners was the testimony of experts of the National Association of Cotton Manufacturers, the American Cotton Manufacturers Association, and several state trade associations. Also many exhibits and statistical studies were introduced to show living and production costs, and freight rates on raw materials, mill supplies, and textile products from more than three hundred representative destinations and shipping points throughout the country.

[4] Much of the evidence before the Administrator is in sharp conflict. We are constrained to believe, however, that a preponderance of the evidence discloses that there is a decided rate disadvantage as against the Southern and Southwestern mills. However this may be, a majority of Industry Committee No. 1, after an exhaustive investigation lasting several months, recommended to the Administrator a uniform minimum wage of 32½ cents an hour for the textile industry. The administrator gave notice and held a public hearing as provided by the Act. After taking much testimony and considering it along with the committee report and various statistical studies, including a comprehensive wage study known as Bulletin 663 prepared by the Bureau of Labor Statistics, he confirmed the report of the committee, holding: "I conclude, therefore, that the South is at least in a position of equality with the North as far as production costs are concerned and that with respect to production, transportation and living costs considered together there is also substantial equality between the regions. I find, too, that competitive conditions as affected by transportation,

living and production costs do not justify a differential in minimum wage rates." He also found that "the proposed minimum will not substantially curtail employment in the cotton textile industry or in any definable group of plants or regions of the industry."

[5] Under Section 10(a) of the Act the review of this court is limited to questions of law, and the findings of fact by the Administrator are conclusive if supported by substantial evidence. Whatever discrimination may be pointed out in the conflicting evidence, labor should not be called upon to equalize the discrimination by bearing all the load. The minimum wage fixed by the order of the Administrator provides a weekly earning of approximately thirteen dollars. When one takes into consideration living expenses scaled down to the necessities of life it can readily be seen that the minimum fixed by the Administrator's wage order provides, at most, a meager living. Substantial evidence can be found in the record to support the findings of the Administrator and we are not willing, therefore, to overturn his order. Consolidated Edison Co. v. Labor Board, 305 U.S. 197, 59 S.Ct. 206, 83 L.Ed. 126; Labor Board v. Brown Paper Mill Co., 5 Cir., January 17, 1940, 108 F.2d 867; Florida v. United States, 292 U.S. 1, 54 S.Ct. 603, 78 L.Ed. 1077; Labor Board v. Waterman Steamship Corp., February 12, 1940, 60 S.Ct. 493, 84 L.Ed.—.

[6] In passing upon the constitutionality of the Act it is not necessary to determine whether all provisions are within the power of Congress. Section 19 provides for separability of provisions, and only those provisions affecting this proceeding are passed upon. If other provisions in the Act exceed the power of Congress they are clearly separable and do not vitiate the Act. Electric Bond & Share Co. v. Secu-

rities & Exchange Commission, 303 U.S. 419, 433, 58 S.Ct. 678, 82 L.Ed. 936, 115 A.L.R. 105.

[7] The power of Congress to regulate commerce "is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations, other than are prescribed in the constitution." Gibbons v. Ogden, 9 Wheat. 1, 196, 6 L.Ed. 23.

[8] In enacting the Fair Labor Standards Act of 1938 Congress sought to conserve interstate commerce and protect it from the burdens and obstructions incident to the transportation of goods produced under substandard working conditions. Any doubt that may have existed heretofore as to the constitutionality of such legislation have been dispelled by recent decisions of the Supreme Court. We are of opinion and so hold that the enactment of the Fair Labor Standards Act was a valid exercise of the power given to Congress by the commerce clause of the federal constitution, Article 1, Section 8, Clause 1. Mulford v. Smith, 307 U.S. 38, 59 S.Ct. 648, 83 L.Ed. 1092; Kentucky Whip & Collar Co. v. Illinois Central Railroad Co., 299 U.S. 334, 57 S.Ct. 277, 81 L.Ed. 270; Labor Board v. Jones & Laughlin Steel Corp., 301 U.S. 1, 57 S.Ct. 615, 81 L.Ed. 893, 108 A.L.R. 1352; Currin v. Wallace, 306 U.S. 1, 59 S.Ct. 379, 83 L.Ed. 441; Santa Cruz Co. v. Labor Board, 303 U.S. 453; Brooks v. United States, 267 U.S. 432, 45 S.Ct. 345, 69 L.Ed. 699, 37 A.L.R. 1407; Champion v. Ames, 188 U.S. 321, 23 S.Ct. 321, 47 L.Ed. 492; see Hammer v. Dagenhart, 247 U.S. 251, 38 S.Ct. 529, 62 L.Ed. 1101, 3 A.L.R. 649, Ann. Cas. 1918E, 724.

[9] The policy of Congress is precisely defined in the Act. It prescribes definite standards for the guidance of administrative action and indicates in detail the considerations which are to be held in view in promulgating wage orders. To protect against arbitrary action Congress "has

afforded both administrative and judicial review to correct errors. This in not to confer unrestrained arbitrary power on an executive officer." We are of opinion that the delegation of power to the Administrator was not unconstitutional. Mulford v. Smith, 307 U.S. 38, 59 S.Ct. 648, 653, 83 L.Ed. 1092; Currin v. Wallace, 306 U.S. 1, 59 S.Ct. 379, 83 L.Ed. 441; United States v. Rock Royal Cooperative, Inc., 307 U.S. 533, 59 S.Ct. 993, 83 L.Ed. 1446; Panama Refining Co. v. Ryan, 293 U.S. 388, 421, 55S.Ct. 241, 79 L.Ed. 446; Hampton & Co. v. United States, 276 U.S. 394, 48 S.Ct. 348, 72 L.Ed. 624.

[10] The procedure followed by the Administrator in adopting the recommendations of the industry committee was in accord with the due process requirements of the constitution. Proper notice was given of the public hearing before the Administrator and the petitioners were given full opportunity to be heard. The administrative proceedings met the "rudimentary requirements of fair play" held to be essential to due process. Morgan v. United States, 298 U.S. 468, 56 S.Ct. 906, 80 L.Ed. 1288; Morgan v. United States, 304 U.S. 1, 58 S.Ct. 773, 999, 82 L.Ed. 1129. The Fair Labor Standards Act of 1938 as applied to these petitioners is constitutional.

The wage order of the Administrator measures to the requirements of the Act.

The wage order is affirmed.

JUDGMENT.

Extract from the Minutes of April 2nd, 1940.

OPP COTTON MILLS, INC.,

No. 9313

versus

ADMINISTRATOR OF THE WAGE AND HOUR DIVISION OF THE DEPARTMENT OF LABOR.

This cause came on to be heard on the petition of Opp Cotton Mills, Inc., and on the intervening petitions of Aponaug Mfg. Co. & J. W. Sanders Cotton Mill, Inc., and others, Intervenors, to review a wage order of the Administrator of the Wage and Hour Division of the United States Department of Labor, dated September 29, 1939, effective October 24, 1939, and was argued by counsel;

On consideration whereof, It is now here ordered, adjudged and decreed by this Court, that the said wage order of the Administrator of the Wage and Hour Division of the United States Department of Labor in this cause be, and the same is hereby, affirmed.

PETITION FOR REHEARING AND FOR CONTINUATION OF STAY ORDER—FILED APRIL 19th, 1940.

IN THE

UNITED STATES
CIRCUIT COURT OF APPEALS

FIFTH CIRCUIT.

No. 9313

OPP COTTON MILLS, INC., ET AL, PETITIONERS

versus

ADMINISTRATOR OF WAGE AND HOUR DIVISION DEPARTMENT OF LABOR, Respondent

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PETITION FOR REHEARING

Come now the Opp Cotton Mills, Inc., Petitioner in the above entitled and numbered cause, and the Intervenors who have entered their appearance herein and joined with said Petitioner, and petitioning, would show unto the Court that the opinion heretofore filed on the second day of April, 1940 should be withdrawn and that judgment to be entered thereon shou'd be withheld and an order should be entered granting unto said Petitioner and Intervenors a further hearing on the matters and things set up in said petition, and for cause would show unto the Court the following to-wit:

I.

That the opinion filed by the Court does not show that any consideration was given to the point seasonably raised by the Petitioner and Intervenors that the Administrator acted contrary to law in adopting an arbitrary definition of the Textile Industry which to him apeared to be one which would enable him to eliminate from consideration by, or the recommendations of Industry Committee No. 1, any claim or right of these petitioners and intervenors to a wage differential, thereby eliminating one element from the study and consideration required of the Committee by the terms of the Fair Labor Standards Act.

II.

That the opinion does not show that the Court gave any consideration to the question of whether or not the Administrator acted arbitrarily in exercising the discretion conferred upon him by the Fair Labor Standards Act in the selection of the personnel of the Committee,[1] it being shown by the Record that discretion was exercised with the view of se-

[1]In the consideration of whether or not a discretionary power has been abused, the first matter to be determined is whether the discretion was conferred in order to substitute the judgment of the Court or officer vested with the discretion for that of the legislative body, or whether it was to be fitted to the special circumstances of the case and exercise with the view of carrying out the purpose of the legislation delegating the authority, or to avoid injustices. In the former case, the discretion must be considered absolute. The discretion conferred upon the Wage and Hour Act Administrator is not absolute, since the Act itself prescribed certain limitations upon the Administrator which must be observed. Any further discretion in the selection of personnel must, undoubtedly, be considered as intended to permit greater power in carrying out the purposes of Congress in passing the Act, and to prevent such injustices as were perpetrated in the case at Bar. To place any other interpretation on the Act is to convict Congress of an intention to pervert the constitutional powers conferred upon it, and to have its legislation tortured into an interpretation and application wholly foreign to its legislative powers, and for the purpose of substituting arbitrary and absolute government for the practices and institutions of democracy and common law.

lecting a Committee which would not consent to a wage differential in favor of the Petitioner and Intervenors, or members of industries similarly situated.

III.

That the opinion filed by the Court does not disclose whether or not it was the duty of the Committee to ascertain facts which were easily available, which would have clearly demonstrated the necessity and requirement of differentials in favor of the petitioner and intervenors, or was simply required to consider such evidence and information as might be submitted to it by the Administrator and volunteers, not proper parties to the proceeding.

IV.

That the Court cites and quotes uncontradicted testimony which the Court finds preponderates in favor of the granting of a differential in favor of the Petitioner and Intervenors, but holds that there was substantial evidence to the contrary, without pointing out any such evidence, and when, as a matter of fact, the Record discloses no evidence which is directly in conflict with that cited and quoted by the Court.

V.

That the opinion holds that there was substantial evidence to support the conclusions and findings of the Administrator, without pointing out the evidence which tended to support any particular conclusion or finding.

VI.

That the Court, by inference, holds that there was not a sufficient difference in the wages paid by these Petitioners and those paid in other sections of the industry to justify a

finding that a differential should be granted to these Petitioners, but does not point out any such evidence, or any evidence from which supporting inferences could be drawn.

VII.

That the Court does not consider the universal difference in wage structure between the region where these Petitioners operate and other regions, does not dispute the clear inference to be drawn therefrom, and does not disclose the process by which this evidence is to be ignored, there being no evidence to the contrary.

VIII.

The Court does not advert to the fact that the United States has always recognized the need for wage differentials in the South as evidenced by N. R. A., Social Security payments, Government contract wages, and W. P. A. wages; does not dispute the inference to be drawn therefrom; and does not point to any evidence in conflict therewith or which would tend to refute the inference.

IX.

The Court does not consider the evidence on the question of comparative living costs, although that question is one required to be considered under the terms of the Act.

X.

The Court ignores the fact that the only inference that can be drawn from the proof relied upon by Respondent on comparative living costs is that costs are higher in large cities than in small towns and rural communities, and that the industries of these petitioners are located in towns and rural communities.

XI.

That the Court does not disclose the inferences to be drawn from the evidence relied upon by the Administrator to refute the direct and uncontradicted testimony adverted to by the Court in its opinion, and does not disclose by what process of probable reasoning such evidence may be given such effect.[2]

XII.

The Court does not pass upon the admissibility of Bulletin 663 except by inference, the inference being that hearsay testimony of the opinion of an absent witness, whose opinion was based on hearsay, unverified statements and the conclusion of others, not experts; none of which could be relevant to any issue as between the proponents of the minimum wage and any individuals to be affected thereby, may be accepted as proof of a conclusion not expressed or approved therein.

XIII.

The Court does not indicate the characteristic on the basis of which it holds Bulletin 663 to be substantial evidence, or what issues it may relate to or affect.[3]

XIV.

The Court does not disclose what inferences it draws from the matter set forth in Bulletin 663.

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[2]This Court judicially knows that a witness testifying that living costs in the South are as high as those in the North would stultify himself. No witness appearing before the Administrator did so testify. Surely, the public should be told how speculation and inference can be made to bind the Court to such a holding in the face of direct and uncontradicted testimony.

[3]There being an apparent conflict between the opinion and the former holdings of this Court in *N. L. R. B. v. Bell Oil and Gas Co.*, 48 F. (2d) 406 and *South Alabama Land Co. v. Commissioner*, 104 F. (2d) 27. The exact position of the Court should be clarified.

XV.

That the Court finds that at least two competent and qualified rate or tariff experts testified that there was a definite rate advantage in favor of the North as against the South in the matter of transportation costs, but that this testimony was contradicted by that of witnesses introduced by, and on behalf of, the Respondent, notwithstanding the fact that the only witnesses testifying for the Respondent on the matter of transportation costs qualified as economists and not as rate or tariff experts, and that the only rate or tariff experts testifying before the Administrator were the witnesses whose testimony was adverted to by the Court in its opinion.

XVI.

That in passing upon the power of this Court to review the findings and orders of the Administrator and Respondent herein, this Court followed the wording of the Act, but did not undertake to say to what extent the appellate power therein conferred might be exercised;[4] or whether or not findings of fact, based on mere conclusion, speculation, and surmise, contrary to common knowledge, direct testimony and common sense, could be made binding upon the Court, and this Court could be used as a tool or instrumentality to perpetuate untruth, prejudice, and sectional self-interest in the execution of legislative and judicial power specially conferred upon administrative bodies.

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[4]In its opinion, the Court states that labor should not be called upon to equalize the discrimination which it recognizes to exist. With deference, it is submitted that it was not the purpose of Congress to have a burden placed upon any individual group, corporation, industry, section, or area. A fair interpretation of the Act, and an order based upon the uncontradicted testimony in this Record, would prevent any burden being placed upon any one; but notwithstanding this, the Administrator has undertaken to place the burden of increasing the income in the larger mills and in the northern section upon the small mill group located in the South. With deference, we submit that if the power exists to place this burden, or to determine who should bear it, that power is vested in Congress and not in the Administrator or in the Court.

XVII.

That in its consideration of the constitutionality of the Act under review, the Court correctly found that the power of Congress to regulate commerce "is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations, other than are prescribed in the Constitution," but failed to consider whether or not the Act under consideration was an attempt by Congress to confer upon the Administrator the power to control wages and hours in industry, or was a regulation or prohibition upon commerce, and thus within the commerce power of the Federal Government.

XVIII.

That in considering the constitutionality of the Act as a regulation of interstate commerce, the Court upheld its constitutionality upon one case involving a direct prohibition of the movement of certain commodities, and the series of cases upholding the various Agricultural Marketing Acts, and the findings of the National Labor Relations Board, when in each of the latter two classes of cases mentioned, the Supreme Court refused to hold any of the legislation constitutional, without first holding that it did not attempt or undertake to regulate local matters.

XIX.

That by referring to the expressed purposes and objects of Congress in the enactment of the Fair Labor Standards Act, the Court, by implication, concedes to Congress the power to pass legislation and bring it within the constitutional grant by the expression of a purpose or intention to accomplish a purpose within the constitutional grant of power.

XX.

The holding of the Court as expressed by the opinion filed in this case would indicate that the Court has conceded the power to Congress to regulate all matters affecting any industry, the products of which are ultimately destined to move in interstate commerce, without regard to any power that may have been reserved to the States with respect thereto, and without pointing out, designating, or indicating any power which the States may exercise over such industry in the exercise of their inherent and original sovereignty.

XXI.

That in upholding the constitutionality of the Fair Labor Standards Act as a valid delegation of legislative power, the Court has failed to consider the qualitative nature of the power conferred, but has simply considered the quantity or number of limitations placed thereon with their numerical definitions and subdivisions, without regard to the fact that by virtue of the nature of the powers granted by the Act and because of the use of mathematical combinations, the limits put upon the power of the Administrator are no less broad than the scope of industry itself, and extend to fields which are not within the power of Congress itself.

XXII.

That in considering and upholding the Fair Labor Standards Act under the due process clause, the Court considered nothing but the procedural provisions of the Act, notwithstanding the undeniable principle that by no procedure can any administrative officer, or body, be authorized to deprive

a person of his liberty or property, where neither Court nor Congress could have done so.[5]

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[5]The great students in the field of ethics, from the day of Solomon until the age of Nietzsche and Rousseau, placed their greatest reliance upon the rights of individuals, and the duty of all, including government, not to interfere with, abridge, or destroy certain fundamental concepts of liberty of individual action. From time to time, governments did abridge these rights and did, by the use of arbitrary force, tyranize their people and destroy their liberty, but, in every such instance, the government ultimately fell of its own weight. Among the English-speaking peoples, from the days of the Conquest until the beginning of the fourth decade of the 20th century, every incursion on the part of government into the field of individual liberty, has resulted in a clash of government with the people, resulting in greater recognition and more indisputable proof of the inviolability of human rights. To mention only a few, we have outstanding instances of the results of such conflicts, as evidenced by the Bill of Rights, Magna Charta, Declaration of Independence, United States Constitution, the Thirteenth, Fourteenth, and Fifteenth Amendments, and the Twenty-first Amendment. As opposed to these principles, there has been recognized in the nations of Continental Europe, a doctrine that that is right which is good for the Nation, and on this principle, Continental codes have been rewritten or modified to abridge the liberty of individuals whenever and wherever it was deemed best for the whole social organism.

Under the American system, it has always been recognized that whatever power there was to abridge human liberty originated with the States because of their inherent sovereignty, and that only so much thereof as was expressly conferred upon the Federal Government could be exercised by that authority. In its zeal and desire to protect human life, liberty, and property, the Federal Government, under the guise of the due process clause of the Fourteenth Amendment, has repeatedly exercised a regulatory and supervisory function over all of the States, whenever there was an asserted conflict between that inherent sovereignty and any of its subjects or the subjects of another State. The due process clause of the Fourteenth Amendment might logically have been confined to purely procedural matters, but no Justice of the Supreme Court has ever contended that the power conferred was thus limited. It cannot, at this late date, take the position that the due process clause, even though appearing in the Fifth Amendment instead of the Fourteenth, is confined to mere matters of procedure; and that if a hollow-sounding notice is given, a right of hearing without consideration is extended, and an appeal to a Court which can neither dispute an unfounded conclusion of fact, nor do justice because of an arbitrary conclusion of law, is provided for, that due process has been complied with and the liberty of the individual has been vindicated.

As examples of the zeal with which the American, as well as the English Courts, have protected the rights, liberty, and property of the individual, we have only to consider the duties and obligations imposed upon public service instrumentalities. If a Railroad Company operating a train of 10,000 tons or more, hauling fruit, vegetables, clothing, building material, and other necessities for the teeming millions of a great city, through its servant and engineer, discovers the cow or horse of a lowly individual in a place of peril on the track in front of the oncoming train, and has it within his power to stop before injury occurs, and does not do so, the Railroad Company is required to respond in damages, notwithstanding the fact that the cost of stopping and starting the train

XXIII.

That in considering the validity of the Act, the Court does not take note of the fact that the money or property of these Petitioners is taken either as a result of a non-adversary summary proceeding in which facts are conclusively adjudicated against them, or by simple legislative fiat.

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may be greater than the price of two such cows or horses, and notwithstanding the fact that the Government, itself, has provided the agency and machinery by which rates may be adjusted to impose the costs upon the teeming millions being served by the instrumentality.

Though not enumerated either in the Fifth or the Fourteenth Amendment, the right of the citizen to be secure in his possession and personal effects, not to have his liberty to use his property, money, or services either through the medium of contract or consumption, abridged or taken away from him, is guaranteed by the due process provision. The procedural steps with which due process is concerned are but the entrance, the passageway, and the instrumentalities by which the protection guaranteed by the two Amendments is approached, invoked, and obtained in substance rather than in form.

Substituting for the American and common-law ideals, the fundamental basis of the Continental Codes, the railroads may destroy the poor man's horse, or the Light Company may burn up the laborer's home, the Telephone Company may allow the individual to languish and die without summoning aid, but if the sum total of the gain or advantage to the public be substantially greater than the damage sustained by the individual as calculated by bureaucratic statistical methods, no one is permitted to complain.

The leading modern advocate of the "welfare of the nation" doctrine, is not the Chairman of the House Committee of Labor, not the Chairman of the Senate Committee on Education and Labor, is not the President of the Congress of Industrial Organization, is not the President of the American Federation of Labor, is not the Captain of any industry now functioning in America, but the doctrine is now being expounded with greatest force, emphasis, and effect by Doctor Frank, Minister of Justice of the German Reich. With all that has been said concerning the modernization of the Supreme Court of the United States, its rejuvenation and change of ideals, it is not believed that the change in personnel will cause an abandonment of the principles which have hitherto been considered fundamental in the American system for the adoption of principles and doctrines which lead only to the disintegration, destruction, and ruin of entire social groups and the wiping away of liberties fought for and won by men of greater courage, stronger character, and truer patriotism than any who are now in position to challenge the constitutionality of this legislation.

XXIV.

That in considering the validity of the Act, the Court does not take note of the fact that the right to contract for labor, or to labor, is one of the liberties protected by the due process clause.

XXV.

That there is no finding by the Committee, the Administrator, or by the Court that the services of the laborers employed in Petitioners' mills are reasonably worth the amount required to be paid by the order here under review.

WHEREFORE, Petitioners pray that the opinion heretofore filed be withdrawn, that the petition be restored to the docket of this Court for further consideration, that a further hearing be granted to this Petitioner and Intervenors, and that on said further hearing, the order of the Administrator be set aside and held for naught.

(Signed) GESSNER T. McCORVEY,
W. GORDON McKELVEY,
BEN F. CAMERON,
Attorneys for Petitioner and Intervenors.

Of Counsel

FRANK J. MIZELL, JR.,
HOBART A. McWHORTER,
ERWIN AND NIX,
BROMBERG, LEFTWICH, CARRINGTON and GOWAN,
McCORVEY, McLEOD, TURNER and ROGERS

CERTIFICATE

I, the undersigned attorney of record for the Petitioners, and member of the bar of this Court, hereby certify that in my opinion the foregoing petition for a rehearing is well taken, that the grounds stated are valid, and that said petition should be granted.

(Signed) BEN F. CAMERON,

Ben F. Cameron

IN THE

UNITED STATES
CIRCUIT COURT OF APPEALS

FIFTH CIRCUIT.

No. 9313

OPP COTTON MILLS, INC., ET AL, PETITIONERS

versus

ADMINISTRATOR OF WAGE AND HOUR DIVISION DEPARTMENT OF LABOR, Respondent

PETITION FOR CONTINUATION OF STAY

Come the Petitioner and the Intervenors, in connection with their Petition for Rehearing herewith filed, and pray that the execution and enforcement of the judgment entered by this Court on April 2, 1940 (including mandate and any order or action affecting the stay orders granted under Section 10 (b) of the Fair Labor Standards Act of 1938) may be stayed, pending final disposition of said application for rehearing.

(Signed) GESSNER T. McCORVEY,
W. GORDON McKELVEY,
BEN F. CAMERON,
Attorneys for Petitioner and Intervenors.

Of Counsel
FRANK J. MIZELL, JR.,
HOBART A. McWHORTER,
ERWIN AND NIX,
BROMBERG, LEFTWICH, CARRINGTON and GOWAN,
McCORVEY, McLEOD, TURNER and ROGERS

ORDER DENYING REHEARING.

Extract from the Minutes of May 16th, 1940.

OPP COTTON MILLS, INC.,

No. 9313

versus

ADMINISTRATOR OF THE WAGE AND HOUR DIVISION OF THE DEPARTMENT OF LABOR.

It is ordered by the Court that the petition for rehearing filed in this cause be, and the same is hereby, denied.

MOTION AND ORDER STAYING MANDATE AND CONTINUING STAY ORDERS PENDING APPLICATION FOR WRIT OF CERTIORARI—FILE MAY 25, 1940

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 9313

OPP COTTON MILLS, INC., ET AL,
Petitioners,

versus

ADMINISTRATOR OF THE WAGE AND HOUR DIVISION OF THE DEPARTMENT OF LABOR,
Respondent.

PETITION FOR STAY OF MANDATE, CONTINUATION OF STAY ORDER, ETC.

Come the Petitioner and the Intervenors and respectfully show that an order was entered by this honorable court on April 2, 1940, affirming the order made by the Administrator of the Wage and Hour Division of the United States Department of Labor, under date of September 29, 1939; and that on May 16, 1940, an order was entered denying the petition for re-hearing.

They further show that the said final judgment and decree are subject to review by the Supreme Court of the United States on Writ of Certiorari, and that it is the purpose of Petitioner and Intervenors to make application to said Supreme Court for a Writ of Certiorari, and they are at present

time taking steps to said end. They pray, therefore, that the mandate and the execution and enforcement of such judgment and decree may be stayed for a reasonable time, to-wit: Until said Petition is disposed of, and, if the petition is granted, until the case is decided.

They further pray that the orders heretofore entered in this cause staying the order of the Administrator of the Wage and Hour Division of the Department of Labor, dated September 29, 1939, may be continued and held in full force and effect, pending their application for Writ of Certiorari, upon their keeping in effect the bonds heretofore given by them and now in effect, and upon their supplementing such bonds so as to keep the amounts and penalties thereof sufficient to cover the amounts due their respective employees by way of compensation in event such order is affirmed by the Supreme Court.

GESSNER T. McCORVEY,
W. GORDON McKELVEY,
BEN F. CAMERON,

(Signed) Ben F. Cameron,
Attorneys for Petitioner
and Intervenors.

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 9313

OPP COTTON MILLS, INC., ET AL,
Petitioners,

versus

ADMINISTRTOR OF THE WAGE AND HOUR DIVISION OF THE DEPARTMENT OF LABOR,
Respondent.

ORDER STAYING EXECUTION, CONTINUING STAY ORDERS, ETC.

Upon considering the application of the Petitioner and Intervenors for stay of Mandate and of the execution of the judgment of this Court entered April 2, 1940, and the order of May 16th, 1940, denying re-hearing thereon, pending application of Petitioner and Intervenors for a Writ of Certiorari to the Supreme Court of the United States;

It is ordered and decreed that said application be, and it is, granted and that the mandate and the execution and enforcement of said judgment and decrees, and each of them, be, and they are, stayed for thirty days or until disposition of the Petition for Certiorari and, if the Petition is granted, until the case is decided;

Thereupon, on application duly made, it is ordered that the stay orders heretofore entered in this cause in favor of Petitioner and Intervenors, staying and holding in abeyance, the order of the Administrator of the Wage and Hour Divi-

sion of the Department of Labor, dated September 29th, 1939, be, and they and each of them, hereby are continued and held in full force and effect until said Petition is disposed of and, if Writ of Certiorari is granted, until the case is decided, on the bonds heretofore given by the Petitioner and the Intervenors and now in effect; and upon Petitioner and Intervenors supplementing said bonds from time to time so as to make the amounts or penalties thereof adequate to protect and insure the payment to the respective employees of the Petitioner and the respective Intervenors of the compensation protected by said bonds, in event such Wage Order should be affirmed.

So ordered at New Orleans, Louisiana, this 25th day of May, 1940.

(Signed) RUFUS E. FOSTER
United States Circuit Judge.

MOTION AND ORDER FURTHER STAYING MANDATE AND CONTINUING STAY ORDERS PENDING APPLICATION FOR WRIT OF CERTIORARI UNTIL AUGUST 15, 1940—

Filed June 22nd, 1940.

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 9313

OPP COTTON MILLS, INC., ET AL,
Petitioners

versus

ADMINISTRATOR OF THE WAGE AND HOUR DIVISION OF THE DEPARTMENT OF LABOR,
Respondent.

PETITION FOR FURTHER STAY OF EXECUTION, ETC.

TO SAID COURT:

Come the petitioners and intervenors and respectfully show unto the court that on May 25, 1940, an order was entered by the Honorable Rufus E. Foster, Senior United States Circuit Judge, staying the execution and enforcement of the judgment and decrees entered by this Honorable Court, and holding in full force and effect the stay orders theretofore granted, the same being conditioned, however, upon application by the petitioners and intervenors for a writ of certiorari within thirty days from said May 25, 1940. The original of said order, on file in this Honorable Court, is respectfully referred to.

They further show that petitioners and intervenors have been in communication with respondent in an effort to agree

on the record to be filed in the Supreme Court of the United States in connection with said petition for certiorari, and that the parties have entered into a stipulation with respect to said record. Said stipulation contemplates that further parts of the transcript shall be printed, which will require a considerable time to complete. It is the purpose of all parties to go ahead with the petition for certiorari, and said petition will be actually filed just as soon as the record can be printed and made ready for filing.

Petitioners and intervenors pray, therefore, that the order entered herein on May 25, 1940, may be continued in effect, subject only to the limitation that the petition for certiorari shall be filed by intervenors and petitioners on or before August 15, 1940.

(Signed) BEN F. CAMERON,
Attorney for Petitioners and Intervenors.

Comes the Respondent, by his attorney of record, and consents that the foregoing petition may be granted, and that the order submitted in connection therewith and bearing the identification initials of the undersigned attorney of record, may be entered by this Honorable Court or a Judge thereof.

This 20th day of June, 1940.

(Signed) GEORGE A. McNULTY
Attorney for the Administrator of the Wage and Hour Division of the Department of Labor, Respondent.

IN THE

UNITED STATES
CIRCUIT COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 9313

OPP COTTON MILLS, INC., ET AL,
Petitioners,

versus

ADMINISTRATOR OF THE WAGE AND HOUR DIVISION OF THE DEPARTMENT OF LABOR,
Respondent.

ORDER FURTHER STAYING EXECUTION, ETC.

Upon considering the application of the petitioners and intervenors for a continuation in effect of the order entered May 25, 1940, and it appearing that the Respondent has consented to the entry of this order on said petition;

IT IS ORDERED AND DECREED that said petition be, and it is, granted, and the order entered herein May 25, 1940, is continued and held in full force and effect, provided petition for certiorari is filed on or before August 15, 1940.

IT IS FURTHER ORDERED AND DECREED that the mandate and the execution and enforcement of the judgments and decrees of this court, entered April 2, 1940, and May 16, 1940, and each of them be and they are stayed until August 15, 1940, and if petition for certiorari to the Supreme Court of the United States is filed on or before said date, said stay shall be continued and held in effect until said petition is passed on by the Supreme Court of the United States, and if the writ of certiorari is granted, until the case is decided by said court.

IT IS FURTHER ORDERED AND DECREED that subject to the same conditions and on the same terms, the

stay order heretofore entered in this cause in favor of petitioner and some of the intervenors, staying and hold in abeyance the order of the Administrator dated September 29, 1939, be and they, and each of them, hereby are continued and held in full force and effect until said petition is disposed of, and if the writ is granted, until the case is decided, on the bonds heretofore given by the petitioner and the intervenors and now in effect; and upon petitioner and intervenors supplementing said bonds from time to time, so as to make the amounts or penalties thereof adequate to protect and insure the payment to the respective employees of the petitioner and the intervenors of the compensation protected by said bonds in event such wage order should be affirmed.

DONE AT New Orleans, Louisiana, this 22nd day of June, 1940.

(Signed) RUFUS E. FOSTER
United States Circuit Judge.

CLERK'S CERTIFICATE
UNITED STATES OF AMERICA.

UNITED STATES.
CIRCUIT COURT OF APPEALS
FIFTH CIRCUIT.

I, Oakley F. Dodd, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 355 to 388 next preceding this certificate contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 9313, wherein Opp Cotton Mills, Inc., is petitioner, and Administrator of the Wage and Hour Division of the Department of Labor is respondent, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record numbered from 1 to 354 are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.

In testimony whereof, I hereunto subscribed my name and affix the seal of the said United States Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 1st day of August, A. D., 1940.

(Signed) OAKLEY F. DODD
Clerk of the United States Circuit Court
of Appeals for the Fifth Circuit.

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SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 14, 1940

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit is granted, and the case is assigned for argument immediately following No. 82.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.